

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
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UNITED STATES OF AMERICA : CRIMINAL ACTION  
:   
vs. :   
:   
VINCENT WILLIAMS, :   
JAMAIN WILLIAMS, :   
ANDRE COOPER : NO. 01-512

PHILADELPHIA, PENNSYLVANIA  
May 10, 2006  
BEFORE HONORABLE J. CURTIS JOYNER, J.  
DAY TWELVE - PENALTY PHASE

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1           (The Court began the proceedings at  
2   9:30 a.m.)

3           THE COURT: Counsel, are we ready for  
4   the jury?

5           MR. HILL: We are, Your Honor.

6           THE COURT: Let's get started then.

7           (The jury entered the courtroom at  
8   9:25 a.m.)

9           THE COURT: Good morning, ladies and  
10   gentlemen. Welcome back this morning. We are  
11   ready to resume with the closing summation of  
12   counsel.

13          Mr. Hill, you may proceed.

14          MR. HILL: Thank you, Your Honor.

15          Good morning, everyone. I wanted to  
16   just touch on a couple of things to remind you,  
17   to bring you right back to where I was yesterday  
18   when we were closing.

19          We had talked about family discord. We  
20   talked about Linda moving out. We had talked  
21   about the loss of positive role models and  
22   mentors and the ascendancy, if you will, of  
23   negative role models.

24          We had talked about how Jamain was  
25   upset, and reminded you of the testimony of

1 Juanita Simpkins, how Jamain went to her on a  
2 number of occasions crying, why did my mom move  
3 out, why did this have to happen? We talked  
4 about what that meant to the structure of the  
5 household.

6 We reminded you of cousin Kevin saying  
7 the boys weren't required to do anything, slept  
8 all day. We reminded you that Gladstone  
9 admittedly was a passive person, depressed,  
10 smoking marijuana.

11 We reminded you of these things only to  
12 create the impression of the household as it  
13 was. All right?

14 It's in this environment that we see  
15 that we lose Jamain to the corner.

16 Now, I wanted to, at this point, remind  
17 you of a couple other things.

18 Heather Kasarda, the probation officer,  
19 testified that she not only told the school  
20 people about this -- and we showed you Josette  
21 Springer's note and we gave you Heather's live  
22 testimony here -- told the school people about  
23 the need for remediation and the problems there.  
24 She also told Linda and nothing happened. Linda  
25 didn't take steps to address the issue. That's

1     what Heather told you.

2             Also, I want to remind you of the  
3     testimony of Caroline Saunders, about when she  
4     wanted to intervene for Jamain about school with  
5     Linda, and Linda basically said, no thanks.

6             I say these things so that you have a  
7     clear picture of what was going on regarding the  
8     school issues. I tell you these things so that  
9     you have a clear picture of what was happening  
10    at age 13, how all these things -- when I say  
11    "age 13," I'm not saying, you know, April 1st,  
12    on his 13th year of life. I'm saying in this  
13    time period, 12, 13, 14. Okay? And that's what  
14    everyone's testimony is.

15            Frankly, the family members aren't  
16    well-equipped to be good, accurate historians in  
17    terms of date, time and place. Okay?

18            But during this time period, 12, 13,  
19    14, we lose Jamain to the corner. We lose  
20    Jamain to the corner for all these reasons.

21            I think you can see that. I think  
22    those of you that are parents, those of you who  
23    know children, those of you who have raised  
24    children, know the importance of what I'm  
25    talking about, the importance of structure and

1     how that structure was gone.

2             Waverly Duck told a story from the  
3     witness stand about Jamain and his first  
4     endeavor on the corner, about how he was  
5     arrested because some older guy gave him some  
6     drugs to hold.

7             The police officer took him down, and  
8     Jamain said nothing. He comes home; Linda goes  
9     down and gets him, brings him home. What  
10    happens? Jamain ends up going right back  
11    outside, right back to the corner.

12            Waverly told you that the Oldhead gave  
13    him some dope and said, way to go, good job.  
14    This is Jamain's stake. This is his own to  
15    sell. That's the process of how this worked.

16            That's the process that Dr. Anderson,  
17    Dr. Duck said that they understand from other  
18    stories about these situations, and other  
19    research that they've done into street corner  
20    drug dealing.

21            Now, we understand, and I've gone  
22    through a number of these issues with you about  
23    the family, about Chester. I'm not going to  
24    belabor Chester and about the school. We  
25    understand that, I think. I think you can see

1 where that is compelling mitigation, compelling  
2 mitigation for you to make moral determination  
3 about Jamain, about whether or not he is worthy  
4 of a life sentence, about whether or not there  
5 are certain things in him that we need to  
6 understand to make this reasoned moral judgment  
7 on punishment.

8 We also presented stories about Jamain.  
9 The issue throughout the entire trial was point  
10 a finger at Jamain, point a finger at Jamain,  
11 keep pointing that finger at Jamain again.

12 I think throughout that whole trial,  
13 you heard a couple of stories about Jamain that  
14 were positive stories from the government's  
15 witnesses.

16 Remember the story about Bird's mom,  
17 Stephanie Jones?

18 If you could get that Power Point  
19 slide, which is Slide 17, please.

20 Sometimes this technology doesn't  
21 necessarily work the way you want it to.

22 Yesterday I threw up a slide that had  
23 nothing to do with what I was talking about, but  
24 I explained it anyhow.

25 This slide, however, this is Stephanie

1 Jones' testimony from March 14th. Read this,  
2 please and remember this.

3 Stephanie Jones had a breakdown. She  
4 had a breakdown because her father, I think it  
5 was, had passed away, a relative had passed  
6 away. She said, I couldn't walk, I couldn't  
7 eat, couldn't get around. I couldn't do  
8 nothing.

9 He, Jamain, would help me out with my  
10 two little boys. He made sure they got up and  
11 got ready for school. He would sit there on the  
12 outside of the house, or him and my son, and  
13 that would be Bird. They would sit there, more  
14 or less, and try to get me something to eat.  
15 They would watch the house so I wouldn't get out  
16 and hurt myself.

17 How long did that go on for? That went  
18 on for a year and a half. That whole time  
19 Jamain was helping you? Yes.

20 That shows a little something else  
21 about Jamain, something else that we don't see  
22 in the indictment and see in the accusations.  
23 There's something good there. There is  
24 something good there that would do this for  
25 Stephanie Jones; go out of his way to help her



1 out, go out of his way to get her kids ready for  
2 school, to go out of his way to make certain she  
3 didn't hurt herself and had, as she said, stuff  
4 to eat.

5 Felicia Bowman lives across the street  
6 from Gladstone Williams in Highland Gardens.  
7 Felicia Bowman is older than Jamain by four  
8 years.

9 She testified that she had an elderly  
10 mom who lived there, and for a while Felicia  
11 moved away. When she moved away, Jamain would  
12 routinely check on her mom to make certain that  
13 she had groceries, make certain if she needed  
14 something, Jamain would go to the store for her.  
15 Make certain she was okay.

16 There's something good there in a  
17 person that does that. She said that Jamain,  
18 when her daughter was out playing, would give  
19 her daughter a hug, would play with her  
20 daughter, kissed her. There's something good  
21 there in that sort of person.

22 He bought diapers and clothes for her,  
23 probably with drug money, I would concede that.  
24 He bought diapers and clothes for her kids when  
25 she had no money.

1           He would loan money. He would loan  
2 money to her. He took her nephew to the  
3 hospital, and waited at the hospital with her  
4 until the nephew is patched up to bring them  
5 back home.

6           One time she was locked out of the  
7 house. Jamain helped her get back in, checked  
8 the house out to make certain that it was okay,  
9 that there wasn't someone inside the house that  
10 could harm her.

11          She described him as protective and  
12 quiet.

13          Laveer White testified that -- with  
14 drug money probably because we know Jamain never  
15 had a job -- Jamain bought what he called two  
16 basketball courts. Do you remember that?  
17 Jamain put them up down on the other end of  
18 Boyle, put them up down where they were not in  
19 front of someone's house, but in between houses,  
20 put it on the street so that everyone could  
21 play.

22          He told you that he saw the police come  
23 by and tear down the first basketball court that  
24 Jamain bought with drug money, and Jamain bought  
25 a second one and put it up.

1           You also heard stories about how Jamain  
2 bought basketball shoes for kids playing in the  
3 summer league who couldn't afford basketball  
4 shoes. He probably bought it with drug money,  
5 probably, but it's something that he didn't have  
6 to do.

7           It's something where he reaches out to  
8 another. It's something where it shows some  
9 goodness.

10          Lavere told you about the importance of  
11 religion in his life, the importance of his  
12 mother pushing him as a mentor, keeping him on  
13 the right path.

14          You also heard from Aaron McCarey. He  
15 was into rap music. Do you remember that?

16          Now, before I tell you Aaron's story,  
17 and tell you about how he had nothing but good  
18 things to say about Jamain and Jamain's  
19 encouragement of him in rap music, I want to  
20 step back and remind you of Heather Kasarda.

21          Remember the job fair? Jamain was  
22 going to go to the job fair and didn't go. He  
23 didn't go because they couldn't find his birth  
24 certificate, nor his Social Security card. He  
25 didn't go.

1           Aaron went to a similar program. I  
2 asked him, I said, what did you need to go? He  
3 said, well, you needed documents. What  
4 documents? Birth certificate and Social  
5 Security card. Aaron, where did you get it? My  
6 mom sent off to Harrisburg. My mom sent off to  
7 Harrisburg to get the documents for me.

8           That's quite the contrast to what you  
9 heard Jamain say, well, we just couldn't find  
10 them.

11           Jamain encouraged him in his rap music.

12           There's a young man down the street.  
13 His mother was standing outside one night or one  
14 afternoon, and a gentleman friend of hers was up  
15 in her face yelling. Greg is about three or  
16 four years younger than Jamain.

17           Greg, fearing for his mom, steps in and  
18 tries to separate this situation. Greg said, I  
19 was afraid the guy was going to come on me.  
20 Jamain walking down the street walks in, steps  
21 in and mediates the dispute. I said, was there  
22 violence? He said, no. Jamain just calmed him  
23 down, calmed things down.

24           That could be a risky thing to do.  
25 That could be a very risky thing to do on Boyle

1 Street. Jamain did it. Yeah, it was on the  
2 same street where they were selling drugs, but  
3 Jamain did it.

4 There's a certain bit of goodness there  
5 for someone to step in at their own risk for the  
6 benefit of another.

7 Davina Terry, who is Shawanna's sister  
8 and Jamain's sister-in-law, told you the story  
9 about how Jamain, when she had her child -- she  
10 was very young when she had her child. She had  
11 her child, and Jamain would come over and take  
12 him to get haircuts, play basketball with him,  
13 buy diapers for him, do things as kind of a big  
14 brother.

15 This is before Jamain had his own kids.  
16 He made some sort of impact there. That is a  
17 good thing.

18 Felicia Johnson -- excuse me, Davina  
19 said one other thing, too. She said that Jamain  
20 was a good parent. We're going to talk about  
21 this in a minute.

22 She told you that Jamain was good with  
23 his children, would do things with him, was an  
24 attentive, loving father.

25 Felicia Johnson testified -- remember

1 Brian Rogers? Do you remember that guy? He's  
2 no longer facing the death penalty. He could  
3 get out in 25 years. He beat up her dad, put  
4 him in the hospital, busted ribs.

5 Jamain goes to visit him in the  
6 hospital. When her dad comes home from the  
7 hospital, she said he had this thing like hooked  
8 up to him to -- I don't know what it is, but it  
9 was like a machine for his recovery, a drain or  
10 something. I don't know.

11 Jamain helped carry him into the house,  
12 helped get him settled into the house. Jamain  
13 helped him, and he didn't have to. That's a  
14 good thing.

15 She has a brother who has cerebral  
16 palsy and mental retardation and really can't  
17 speak. I believe she said her brother's name  
18 was Ronald. Ronald would get out of the house  
19 and wander down to the corner where they were  
20 selling drugs. He wandered down to the corner,  
21 and Jamain brought him home time and time again.

22 Like Jamain ran his sister off the  
23 corner because it was dangerous, Jamain would  
24 bring Ronald home. It's a little thing, but  
25 it's a good thing.

1 Brenda Pagan told you about Jamain  
2 giving her advice about boys. It's a little  
3 thing, but it's certainly a good thing. Watch  
4 out for that guy. You know what guys want.

5 These things go to show you a different  
6 side of Jamain. These things go to show you  
7 what I told you in my opening in this part, that  
8 I hoped I could get you to see, that there's a  
9 different side of this coin. That's where the  
10 moral dilemma comes in for you, for you, for all  
11 of you.

12 In this same vein, we presented  
13 Dr. Lynn Bornfriend. Remember we had that  
14 25-minute video clip of the kids showing the  
15 handdrawn cards that Jamain had sent to them,  
16 Happy Birthday, I love you, and phone calls?  
17 This is so important. Please bear with me.

18 I've cut it down to, I think, just  
19 under ten minutes. You have the whole disc.  
20 You can play the whole disc, if you choose. I  
21 just want to play segments of it to remind you  
22 of certain things about this.

23 So if we could please put -- you don't  
24 know what video number that is. It's an excerpt  
25 from 180. If we could play this?

1           THE COURT: Yes, it may be displayed to  
2 the jury.

3           (Whereupon the videotape was played.)

4           MR. HILL: I want to tell you why I  
5 want to play this for you. Sorry.

6           (Whereupon the videotape was played.)

7           MR. HILL: That's a hand-colored card  
8 from Jamain. This is another hand-colored card  
9 that Jamain colored. Another hand-colored card.  
10 That's Jamain and the Dumbo elephant back there.  
11 The other card wasn't hand drawn. This one is.

12           It's a little thing, but last weekend  
13 for my wedding anniversary, I was a last-minute  
14 shopper for a card. I didn't have time. I  
15 didn't have inclination to draw a card for my  
16 wife. I think it says something about someone  
17 who would take the time to do that.

18           You have to have the time to do it,  
19 first of all, yes. But you have to have the  
20 inclination, more importantly. And that's very  
21 important. It's a little thing, but it's a good  
22 thing.

23           It's a good thing, as Dr. Bornfriend  
24 pointed out, that even though this is not the  
25 perfect situation for parenting, but there are



1 positive aspects to this parenting situation,  
2 encouraging school, encouraging minding your  
3 mom, being respectful, encouraging love.

4 These are small things, but they are  
5 very important. These are things that you can  
6 see in Jamain.

7 I think one of the things that we  
8 wanted to convey is that Jamain is a caring  
9 person, and he is. You've heard different  
10 stories about Jamain. You've seen two sides of  
11 him. You've convicted the one, and you're going  
12 to be asked to punish the other. That's the  
13 kind of punishment that you'll be doing here  
14 shortly.

15 We have submitted -- I want to say one  
16 more thing. Dr. Bornfriend talked about  
17 something, and, in all fairness, I want to bring  
18 this up.

19 Dr. Bornfriend talked about that this,  
20 what you see here, and her interviews with the  
21 kids and her interview with Jamain, is a  
22 positive parent-child relationship.

23 She said that it would be damaging to  
24 these kids should that relationship end. That's  
25 true. It's also true for Tracy Saunders' kids.

1 That's true. I can't change what's happened.

2 As I told you at the beginning of this,  
3 we can only look forward and look forward with  
4 hope.

5 We're going to submit -- and members of  
6 my defense team debated this -- I was going to  
7 put up all of our mitigating factors on an  
8 overhead and show them to you and you can go  
9 through them, but I don't think I'm going to do  
10 that.

11 I think I'm going to leave it to you to  
12 read through these, to understand and recall  
13 what I've told you, the evidence that I  
14 presented, and make your moral judgments, your  
15 individual moral judgments about Jamain.

16 I'm not going to go through all of  
17 these. I do want to talk about a couple of  
18 things.

19 Brian Rogers, Mark Rogers aren't here.  
20 Jamain grew up in a very dysfunctional  
21 neighborhood, household, school system, and he  
22 was suffering with this learning disability, a  
23 learning disability that Mary Lazar and  
24 Dr. Benedict both told you puts him at a higher  
25 risk for violent behavior. There are studies

1     that they cited that demonstrate that.

2             I want to also get you to think about  
3     another general area where Jamain has had a  
4     positive influence on people. Jamain is capable  
5     of developing relationships. Jamain is capable  
6     of being a good parent, presenting a good  
7     message. These are all positive things.

8             You're going to be asked to make an  
9     individualized determination here. It means  
10    that each of you, each of you, each and every  
11    one of you, is making an independent moral  
12    judgment about life punishment for Jamain. Each  
13    of you.

14            If there's going to be a death  
15    sentence, it has to be unanimous. Any one of  
16    you can give life. You are, each and every one  
17    of you, life givers. That is your power here.  
18    That is your role, and that's what the law says.

19            You have to deliberate, you have to  
20    discuss, you have to put together the evidence.  
21    You have to make an independent, individual  
22    decision, not a decision that is overwhelmed by  
23    majorities, not overwhelmed by people who have a  
24    stronger personality. It's your individual  
25    decision. It's a decision as much of the heart

1 as it is of the mind. It's your individual  
2 decision on life.

3 You all have to respect each other's  
4 individual thought processes on this. One vote  
5 for life means life sentence. Each of you can  
6 influence the future to that extent.

7 This is not a mechanical determination  
8 where you just lay out these flow sheets and  
9 check and check and add, plus this, plus that  
10 and add and add and add. In the end, you can  
11 make your determination as to what mitigation is  
12 most controlling to you based on concepts of  
13 mercy and hope, based on concepts that we  
14 presented in mitigation.

15 You know what else? You'll see this.  
16 If I messed up, and I haven't given you a  
17 mitigating factor that you think should be on  
18 there, you, as an individual, can write it in  
19 here. That's what the blanks are for. And that  
20 loan factor is enough for life. That's the way  
21 the law is, because this is an independent,  
22 moral determination by you, by each of you.

23 In the end, the government is going to  
24 get up here, and I'm not going to be able to say  
25 anything else. Mr. Ricco will not be able to

1 say anything else, and they get rebuttal. They  
2 get rebuttal.

3 Ask yourself, as they are doing this  
4 rebuttal, what would Mr. Hill say in response to  
5 that? What did the evidence tell me in response  
6 to that rebuttal? Because I get no other  
7 chance. I have no other chance to respond.

8 I told you earlier, this is not about  
9 choices. This is a case about how choices are  
10 limited. We are what we learn. We are what we  
11 are taught. You all know this as parents and as  
12 people growing up in stable houses. We are what  
13 we are taught, and 90 percent of that comes from  
14 home.

15 We make our choices based on what we've  
16 learned in that environment under those  
17 circumstances. Yeah, people make choices, but  
18 the issue is how well-equipped are they to make  
19 those choices?

20 That's the issue that comes up, and  
21 comes to the forefront when you're making this  
22 individual, moral determination on sentencing.  
23 We're not talking about guilt or innocence here.  
24 You have decided that. You have decided that.  
25 We're talking about life punishment.

1           In this circumstance, our choices are  
2           moderated and constrained. Our choices are  
3           limited from our circumstances from where we  
4           come from. I didn't choose to be born in Texas,  
5           but I was.

6           Jamain, asking when he is 15, why do we  
7           have to live here, didn't choose to be born with  
8           a learning disability, didn't choose to be born  
9           to parents living on Boyle Street, crying, why  
10          do we have to live here?

11          Our choices -- yeah, we make choices,  
12          but our choices are constrained by our  
13          background, by what we've learned.

14          I talked to you about hope. I talked  
15          to you about hope. I talked to you about -- I  
16          see hope. I showed you photographs with Jamain  
17          and his kids. Dr. Bornfriend has talked about  
18          this. I see hope there. I see hope that Jamain  
19          can lead his kids. I see hope that there is a  
20          positive relationship there. In death, there is  
21          no hope. In death, it's over.

22          Lou, if you could play this?

23          This is one of the phone calls that we  
24          played for you during the trial.

25          (Whereupon the tape was played.)

1           MR. HILL: This is a conversation  
2 between Jamain and his wife about their little  
3 boy. You've been telling him to be good in  
4 school. That's a positive message. That's a  
5 positive parent conversation. It's not an  
6 argument. It's not a discussion about  
7 extraneous things. It's a positive  
8 conversation.

9           Go ahead, please.

10          (Whereupon the tape was played.)

11          MR. HILL: That's his son.

12          (The tape continued playing.)

13          MR. HILL: That's hope. That's hope.  
14 If you kill Jamain, you kill that kernel of  
15 goodness that's in his heart, and that's not  
16 what this is about. If you kill Jamain, you  
17 kill hope. You kill the guy that helped Felicia  
18 Johnson's dad into the house. You kill  
19 goodness.

20          I am not excusing what happened, and I  
21 apologize to the victims. My heart goes out to  
22 them. I can't change it, but you can impact  
23 what happens next. Please, don't kill hope,  
24 don't kill that goodness, no matter how small  
25 you think it is, that's in Jamain's heart.

1 That's not what this is about.

2 Thank you, Judge.

3 THE COURT: Thank you, Mr. Hill.

4 Ms. Taylor?

5 MS. TAYLOR: Good morning, ladies and  
6 gentlemen.

7 THE JURORS: Good morning.

8 MS. TAYLOR: As you see, the attorneys  
9 feel very passionate about this portion of the  
10 case, and, because unlike anything you've ever  
11 had to do, you are now confronted with making a  
12 moral judgment on the lives of two men.

13 Yet, we approach this in two very  
14 different ways. The government is seeking death  
15 based on their conduct on the street. Counsel  
16 for these men ask you now to look at the hope,  
17 to look at the good that is in them, to look at  
18 their good deeds, to look at their children, and  
19 to consider the impact that your decision will  
20 have on the lives of those that they love and  
21 those that love them.

22 There's nothing wrong, I submit to you,  
23 with them asking you to do that, because, as I  
24 told you in my initial remarks, Jamain Williams  
25 is not a monster. Andre Cooper is not a



1 monster. They are men. If you pinch them,  
2 they'll say ouch. If you cut them, they will  
3 bleed. If you hurt them, others will hurt.  
4 There is no denying that.

5 I asked you when you sentenced to look  
6 them in their eyes and see human beings because  
7 I want you -- I submit to you, it's only fair  
8 and just that you treat them not as they treated  
9 others, but as all human beings are entitled to  
10 be treated.

11 Now, by asking you to sentence human  
12 beings, the government in no way means to  
13 insinuate to you that the mitigating factors  
14 that they have presented come close to the  
15 aggravating factors that we've presented.

16 Now, before I get there, I would be  
17 remiss if I didn't respond to some things that  
18 counsel said yesterday.

19 When Mr. Ricco made his remarks, he  
20 spent a good 20 to 30 minutes on double-talk and  
21 misleading you.

22 Let me be clear. To the extent that  
23 you believe I misled you, disregard it. Throw  
24 it out. But to the extent that you believe they  
25 did the same, I challenge you, disregard it.

1     Throw it out.

2                 Now, I don't know what we call it here.  
3     I thought we called it advocacy, but Mr. Ricco  
4     wants to call it double-talk so let's call it  
5     double-talk.

6                 The government never mentioned the word  
7     "hate" to you, not once. Never asked you to  
8     hate these men, but only asked you to judge them  
9     fairly.

10                Hate came from there. Hate came from  
11     Mr. Ricco's mouth, again and again and again.  
12     If I didn't ask you to hate them, why does he  
13     testimony you I want you to?

14                Double-talk or advocacy? You decide.

15                They show Chester High School  
16     statistics. They did it. Spent half of a day  
17     on Chester High School. Andre Cooper never  
18     spent a day there. Never spent a day there.

19                Double-talk or advocacy? You decide.

20                They never showed you the Wilmington  
21     School District statistics, never. But we know  
22     from sixth grade on, that's where he was.

23                Double-talk or advocacy? You decide.

24                They chose a college student, Tanvir  
25     Rahman, to put together some stats, but they

1 forgot to tell him to check them.

2 Double-talk or advocacy? You decide.

3 They said Rashee Grant went to Delaware  
4 to get the van. You have Mark Rogers'  
5 testimony. Rashee Grant didn't go to Delaware  
6 to get the van. Andre Cooper, Jamain Williams,  
7 Vincent Williams and Mark Rogers went to  
8 Delaware.

9 Double-talk, advocacy? Honest mistake?  
10 You decide.

11 They say -- and Mr. Ricco was adamant  
12 about this, you know in jury selection we made  
13 you promise that just because there were three  
14 or more murders you wouldn't automatically vote  
15 for death. And what does the government do?  
16 They ask you to consider it.

17 Now, what does the aggravator of  
18 contemporaneous convictions mean? It means that  
19 you have found more than one death. And how  
20 many did you find? Three. And what is that? A  
21 lawful aggravator. And who knows that? He  
22 does.

23 He tells you that we have done  
24 something wrong. He tells you that we have done  
25 something improper when he full and well knows

1 this Court will instruct you on that aggravator.

2 Double-talk or advocacy? You have to  
3 decide.

4 How come Tanvir Rahman knows all the  
5 counties you live in, but he doesn't know that  
6 Andre Cooper wasn't living in Chester? How  
7 come? And if he did know that Andre Cooper was  
8 in Wilmington, how come he didn't compare  
9 anything to Wilmington? But he knows where you  
10 live.

11 Double-talk or advocacy? You have to  
12 decide.

13 How come during the guilt phase when a  
14 defense cross-examines our witnesses on  
15 everything under the sun, Mr. Ricco says, hey,  
16 we're just putting the government to their  
17 burden. But when we cross-examine witnesses in  
18 a penalty phase, it's ridicule.

19 Double-talk or advocacy? You have to  
20 decide.

21 Why shouldn't you know that Dr. Mark  
22 Cunningham had half a million dollars in taxable  
23 income from going all around the country  
24 testifying in these types of cases? Aren't you  
25 entitled to know that? Isn't that evidence of

1 bias or interest?

2 Double-talk or advocacy?

3 Why does the defense continue to call  
4 Mr. Aiken a warden, when the man has been  
5 retired for ten years and is nothing but a  
6 defense consultant? Why?

7 Double-talk, advocacy?

8 But, more importantly, why does  
9 Mr. Aiken call himself a warden?

10 Double-talk or advocacy?

11 Why does Mr. Ricco look at me and tell  
12 you, if we wouldn't have played those phone  
13 calls, you wouldn't have heard them. Who gave  
14 them to him? If we're running from the phone  
15 calls, ladies and gentlemen, why do I put them  
16 in his hands? Why?

17 Double-talk or advocacy?

18 Why does Mr. Ricco attack the  
19 government? Why? I'm not even going to answer  
20 that question. I'm going to leave that question  
21 to you.

22 I submit this to you, because Mr. Ricco  
23 and I do agree on one, one very key point. This  
24 is important. This is huge. This is huge. It  
25 is not to be taken lightly, and, I submit to

1     you, not one person in this room has, but  
2     certainly not the government.

3             We filed the notice. We bear the  
4     burden. We challenged their mitigation.

5             You know what, we're not going to  
6     apologize for that. We're not going to  
7     apologize for believing that when you commit  
8     three premeditated murders, that the question  
9     should be asked, do you deserve to live or do  
10    you deserve to die?

11            We won't apologize for that. We won't  
12    run from that reality because in this society  
13    there are certain things that we, as citizens,  
14    do that begs that question. I submit to you  
15    three premeditated murders beg the question: Do  
16    you deserve to live or do you deserve to die?

17            Now, Mr. Ricco also said the government  
18    keeps saying "substantially" when they know it's  
19    "sufficiently." I said "substantially," and  
20    "overwhelmingly," just so we can be correct,  
21    because we have more than sufficiently shown  
22    that all of their mitigators do not outweigh  
23    sufficiently, substantially, whatever, our  
24    aggravators, even if you just take one.

25            Now, there's a lot of testimony here

1 about Chester. We didn't put one expert up  
2 there to say Chester was good. Chester is bad.  
3 Chester is bad. We knew it when we went there  
4 in 2001; we know it now. Chester is bad.  
5 Chester is full of poverty. Chester is full of  
6 poor people. Chester is full of everything that  
7 is wrong in America.

8 But, ladies and gentlemen, use your  
9 common sense. There is nothing unique about  
10 Chester. There's a pocket of poverty in every  
11 major city in this country. There are poor  
12 people who live in Chester, who work, most of  
13 them, who don't kill people, who don't commit  
14 crimes, because if that were not true, then  
15 there wouldn't be nine homicides in Chester,  
16 there would be 90.

17 These guys aren't the only drug dealers  
18 in Chester. There's drug dealers on every  
19 corner. We don't contest that. The difference  
20 is, these kill. That's the difference. These  
21 kill.

22 So, yes, they present the mitigator  
23 that Chester is bad. I accept it. Chester is  
24 bad.

25 I tell you something else that they

1 said that I agree with 100 percent. When you  
2 live in poverty, surrounded by drug dealing, and  
3 you have limited other resources, drug dealing  
4 is a viable option, absolutely.

5 But drug dealing doesn't equal killing.  
6 Drug dealing doesn't equal killing three times,  
7 and it certainly doesn't equal three  
8 premeditated murders.

9 So they seek to bring in Chester's bad,  
10 but it only explains why do you become a drug  
11 dealer? Nothing, nothing they presented  
12 explains why do you become a premeditated  
13 murderer three times? Nothing. Not one  
14 mitigator.

15 You look at them. Not one expert got  
16 up there and said and gave us that why.  
17 Because, you see, Mr. Ricco told you, only they  
18 had the why. Only they had the why.

19 You look at their evidence because it  
20 certainly explains why people sell drugs. It  
21 doesn't explain why you commit premeditated  
22 murder, and it certainly doesn't explain why you  
23 do it three times in two years.

24 Now, Mr. Ricco said to you, Karriem  
25 Washington would have shot Andre Cooper if he



1 had a chance. What does that have to do with  
2 Andre Cooper's goodness, with Andre Cooper's  
3 entitlement to life? What does that have to do  
4 with that? Is that an excuse? I don't know.

5 Is that double-talk? I don't know.

6 But I'll say this. The testimony was  
7 that Karriem Washington was in and out of  
8 Highland Gardens looking at him, staring at him,  
9 challenging him. If he wanted to shoot Andre  
10 Cooper, he should have, would have, could have.  
11 He could have. He didn't.

12 See, that's the issue. Not can we read  
13 Karriem Washington's mind, but look at the  
14 evidence. He didn't. He didn't shoot Andre  
15 Cooper.

16 And do you want to throw in there that  
17 people even love Karriem Washington, the thug,  
18 go ahead. I don't know what that has to do with  
19 the goodness left in Andre Cooper. But go  
20 ahead.

21 Now, you don't have to earn the right  
22 to life, but your conduct certainly can earn it.  
23 That was the gravamen of my remarks. If you  
24 want to turn the words around, go ahead. If you  
25 want to use the word "worthy," let's never,

1     ever, never, ever -- I'm never going to say  
2     "earn" again. "Worthy." I like "worthy" better  
3     anyway. So forget when I say "earn." Put  
4     "worthy" in there, and then we all agree.

5             Now, there was a lot of talk about  
6     things that weren't done for Andre Cooper and  
7     the things that weren't done for Jamain  
8     Williams.

9             Andre Cooper's attorney said to you,  
10    some of us have light shed on us all the time;  
11    some of us have light shed on us none of the  
12    time. Andre Cooper never had a light shed on  
13    him. I sat there and I thought, then where have  
14    I been? Because we have been told about the  
15    light that was shed on Andre.

16            Now, maybe that light wasn't enough.  
17    That's for you to decide. But let's be clear  
18    that there were people, circumstances in Andre  
19    Cooper's life over the years that tried to shed  
20    some light on him.

21            His Uncle Mark coached him in  
22    basketball. You saw the clips of him playing.  
23    He's in those basketball leagues. According to  
24    the experts, that's a positive influence.

25            Delores Cooper Lewis tried for the time

1 she had him. He was on a schedule. He ate  
2 right. He went to school. He did his homework.  
3 She showed him a different life.

4 His father, who is either -- if you  
5 listen to little Kevin, my dad would take us to  
6 the restaurants, me and Andre. He would do  
7 things with us. We had a good time. Or, you  
8 listen to Mr. Ricco, Kevin Cooper never saw that  
9 boy because he was working.

10 I don't know. You have to decide. But  
11 one thing is clear. Kevin Cooper loved that  
12 boy. He went to Chester to get him. He may  
13 have went to work after he got him, but he loved  
14 that boy enough to go and get him.

15 He loved that boy enough -- and you go  
16 back and look at the expert's testimony -- to  
17 try to talk to him about right from wrong, to  
18 try to tell him to stay away from these boys in  
19 Chester.

20 The notes say, he stayed in touch with  
21 that boy's mother, trying to talk about what is  
22 going on with Andre. Maybe it wasn't enough.  
23 But let's not say that Kevin Cooper didn't try.

24 When Andre was in Wilmington, there was  
25 after-school recreation. He went to it. It's

1 in the expert's notes.

2 You know what else was positive on  
3 Andre, that no one can deny? He fathered two  
4 boys. He had two reasons to do right, little  
5 Dre and Tahaj. Two reasons to do right.

6 Was a light shed on Andre Cooper when  
7 those boys came into this world? He had to  
8 decide, am I going to be the father who leads by  
9 example, or the father who does my own thing,  
10 despite the light of life that I brought into  
11 this world?

12 Andre Cooper had people, circumstances  
13 and things that tried to help him.

14 Now, I'm going to go to Jamain, even  
15 though I'm jumping around a little bit.

16 Jamain comes from a home that has some  
17 trouble. I submit to you if you look at your  
18 common experiences, having parents that argue,  
19 it's not enough to turn me into a murderer.  
20 Having a father that cheats, okay, having  
21 brothers or sisters, maybe out there somewhere,  
22 okay. Not enough.

23 But he still had two people that he  
24 called Mom and Dad, who stayed in that house  
25 with him for most of his life. They took care

1 of his needs, at times thought he was better  
2 than the other kids around the neighborhood.  
3 They were there, raising him, doing their best.

4 He had an Aunt Juanita who he could go  
5 to. He had Caroline Saunders. He had her son  
6 Conrad.

7 You know what else he had? A wife who  
8 he had been with for most of his teen life, who  
9 was positive, who was working while he's on the  
10 corner, who's living her life the right way.

11 He had a probation officer who he had  
12 the good fortune of running into early enough in  
13 her career where she wanted to save him.

14 Heather Kasarda, on more than one  
15 occasion, Jamain, let me help you get your GED.  
16 Jamain goes to summer school. She helps him  
17 with summer school. She encourages him to do  
18 better. She checks on him at school. She  
19 believes in him. She takes extra time with him.  
20 She goes to his house. She is about Jamain.

21 Ten years later, that woman still  
22 remembers the one she tried to save. He gets  
23 caught with drugs. Jamain, are you selling  
24 drugs? Nope. She believes him. Positive  
25 influence on his life? I submit to you, yes.

1           Laveer White came in here and told you,  
2 we lived down the street from Jamain most of my  
3 life. My dad saw me trying to talk to Jamain  
4 about going to church. Jamain wasn't  
5 interested.

6           These guys had positive influences in  
7 their lives.

8           Let's talk for a second about Gladstone  
9 Williams who may use marijuana, who may have  
10 been depressed. He still is trying to get this  
11 boy a job at the docks. Interested, Jamain?  
12 No.

13           Whatever decision you make, I simply  
14 ask that you make it with the facts, because  
15 everybody walks through this life with baggage.  
16 Each and every one of us, when we look back on  
17 what our parents did for us, can make a list of  
18 the things that they hoped would have been done  
19 because with experience, we realize maybe where  
20 our parents failed.

21           But parents who do their best, I submit  
22 to you, is all any parent can do. When you look  
23 back on your life, on what you have done for  
24 your kids, you can say, I should have handled  
25 that differently, or I should have pushed them

1 more or I should have done that. That's real.

2 They are not making that up. That's real.

3 But it is a reason. Is it a reason  
4 enough to become a premeditated murderer? I  
5 submit to you, it's simply not.

6 Now, I want to go back to Mr. Cooper's  
7 case because I have a few more points there.

8 Mr. Ricco said, there will be those who  
9 will challenge Dr. Hope Hill. Well, here I am.  
10 Here I am. I'm going to tell you why.

11 When you look at Dr. Hill's resume, she  
12 is a million percent qualified to come into this  
13 courtroom and to talk about violence and its  
14 impact on children, no doubt. I didn't  
15 challenge her credentials, didn't ask her one  
16 question about them.

17 But Dr. Hill told you something that I  
18 believe shaped her testimony. Dr. Hill told you  
19 all the hours she spent with Andre Cooper. But  
20 something happened along the way because what  
21 Dr. Hill gave you on direct was expert  
22 testimony.

23 Expert testimony: "Violence in a  
24 child's life early on makes him more likely to  
25 commit violent acts."

1           The government didn't challenge that.

2           Now, on cross, all of a sudden

3     Dr. Hill, when confronted with her own notes, a  
4     woman with a doctorate and a post-doctorate  
5     degree, can't read her writing. Dr. Hill can  
6     read. But Dr. Hill has spent her life looking  
7     at what goes wrong with kids and what did this  
8     trial give Dr. Hill an opportunity to do? To  
9     save one.

10          You look back at her cross-examination.

11     Dr. Hill, did you write this? I really can't  
12     read my own writing. Dr. Hill, does it say  
13     this? I am really not sure. Dr. Hill, you told  
14     this jury that when James Rice was murdered,  
15     Andre Cooper never went back outside again. It  
16     was a life altering event. Yes.

17          Dr. Hill, didn't he go back outside to  
18     plan the murder of Karriem Washington? Wasn't  
19     he still on the corner? Wasn't he in Delaware?  
20     Wasn't he running through Highland Gardens? I  
21     don't know anything about that.

22          I'm not challenging what the doctor's  
23     opinion is. I'm challenging the fact she's  
24     basing it on. But Dr. Hill is fighting me tooth  
25     and nail because she's going to save that boy.



1           Dr. Hill, she says, by the time Andre  
2 was 20, he never had hope, no hope. Dr. Hill,  
3 here in your notes it says, at 19, Nakira is  
4 pregnant, feeling hopeful for the first time,  
5 got to get a job, got to make money. She  
6 doesn't want to admit that.

7           When an expert doesn't want to admit to  
8 the things that they have written and relied on,  
9 then I submit to you that expert has been  
10 compromised.

11           Is Hope Hill an expert on violence and  
12 children? Yes. Should you question her  
13 motivations where she just wants to save Andre?  
14 I submit to you, yes.

15           Now, what does that mean? Do you  
16 disregard her testimony? It's up to you. I'm  
17 not asking you to do that. I'm asking you to  
18 understand that when put in this situation,  
19 someone who has never been here before, like  
20 Dr. Hill, maybe her thoughts and beliefs color  
21 how she wants to be challenged on the basis of  
22 her testimony.

23           Now, Mr. Ricco talked to you about  
24 people who aren't here. And I'm not going to  
25 go -- well, I'm not going to go into a lot of

1 detail on that now, but the one thing he did say  
2 was that we already know what sentences Mark,  
3 Brian and Shane are going to get.

4 Ladies and gentlemen, we don't know  
5 that. That's simply not right. Because Mark,  
6 Shane and Brian have not yet been sentenced.

7 What we do know is that the judge who  
8 sentences them will know what they have done.  
9 We know that Mark and Shane are facing a  
10 mandatory life, but upon the filing of a motion  
11 from the government, that judge could sentence  
12 them to mandatory life or anything else he  
13 thinks he or she believes is appropriate.  
14 That's what we know.

15 We know that no matter what the judge  
16 thinks about how much Brian Rogers did to aid  
17 the government in this prosecution, the minimum  
18 he will get is 25 years, and the maximum he will  
19 get is life. That's what we know.

20 We know that the judge who makes that  
21 decision will have at his or her at disposal  
22 every iota of evidence that has been presented  
23 in this trial. That's what we know.

24 So don't go with Mr. Ricco when he  
25 tells you what we do know, because we don't

1 know.

2 Now, am I saying to you what you should  
3 do with that information? No. I simply want  
4 you to have the true information.

5 Now, Mr. Hill -- or Mr. Ricco. Let's  
6 go back to Mr. Ricco because he talked about  
7 Mr. Hill's witness, and so I want to talk about  
8 Dr. Duck.

9 We only presented very limited rebuttal  
10 in this case, but we did present rebuttal as to  
11 Dr. Duck.

12 Dr. Duck took that stand, and he said  
13 things that the government, quite frankly, found  
14 fairly astonishing. I went back to look at the  
15 transcript because I wanted to make sure, and  
16 you can look at it for yourself, but on May 2nd,  
17 at Page 244, Dr. Duck said, "The kids are all  
18 dressed in black." This is on his direct.

19 On May 3rd, he said, "The thing that is  
20 so memorable are the kids dressed in black." He  
21 goes on to talk about how that's evidence of  
22 this sense of hopelessness.

23 Now, do we care, quite frankly, if ten  
24 kids are dressed in black or 20 or if they wear  
25 black T-shirts or black pants? That's not the

1 point.

2           The point is that Dr. Duck became an  
3 advocate because, for all the years that  
4 everyone else has been out there, nobody has  
5 been dressed in all black. What a powerful  
6 message it would be if all the children in  
7 Highland Gardens woke up one day and every day  
8 just wore black? That would be overwhelming  
9 evidence of a sense of hopelessness that has  
10 permeated generations.

11           Ladies and gentlemen of the jury, that  
12 simply makes no sense. And it was too much, too  
13 over the top for the government to leave  
14 unchallenged.

15           So we sent Agent Updegraff back out  
16 there because if, by some stretch in the last  
17 few weeks, these kids have all started wearing  
18 black, we need to see it.

19           Mr. Ricco may have had fun saying, oh,  
20 there's a black T-shirt under a white T-shirt,  
21 or somebody has got black pants on, but you saw  
22 in those pictures, those people are not all  
23 dressed in black.

24           So, yes, I challenge Dr. Duck. What  
25 are you doing, Dr. Duck? Are you advocating, or

1 are you being an expert? You want to know what  
2 he's doing, so that you can judge his testimony.  
3 I submit to you, he was advocating.

4 Then he says to you, "Boyle Street is  
5 from here to there." Now, you sit in this  
6 courtroom, at least everyone has been to Boyle  
7 Street. You know that's not true. Yet, he says  
8 it.

9 But you know something else. You know  
10 that if he's really been to Boyle Street, he  
11 knows that that's not true. You sit here, and  
12 you have to challenge Dr. Duck because now he's  
13 just sitting up there making things up.

14 So, Agent Updegraff, go on back out  
15 there because maybe Boyle Street has shrunk. We  
16 need to know. He goes out there. Lo and  
17 behold, it's the same old Boyle Street, five  
18 times this courtroom, not from here to there.

19 What is Dr. Duck doing? He's  
20 advocating.

21 He then says to you, the affidavit,  
22 indictment, whatever you government people want  
23 to call it, it's the indictment, showed how  
24 these people get drawn into this.

25 If we don't know anything else, ladies

1 and gentlemen, trust that the government knows  
2 its own charging document. Trust -- and you  
3 look at it. Jamain Williams is not one of the  
4 people that was sucked in. Jamain Williams is  
5 charged as being the leader of the people who  
6 were doing the sucking in.

7 So I say to Dr. Duck, wasn't that  
8 Jamain Williams charged with doing that?  
9 Absolutely not.

10 Now, maybe Dr. Duck doesn't remember,  
11 or maybe Dr. Duck is not being truthful. You  
12 have to decide.

13 But what is he doing? What is he  
14 doing? He's advocating.

15 Then he talks about this first drug  
16 deal at age 11 or 12, and how Jamain was told to  
17 hold something and that's how he began from a  
18 holder to a distributor and this was critical in  
19 Jamain's life.

20 Okay. You look at the juvenile  
21 records. Jamain is arrested at 11 or 12, but  
22 it's for stealing a car.

23 Dr. Duck says, you know what? I didn't  
24 see those records. But I think it was 13.  
25 Well, if you thought it was 13, why did you not

1 say that on direct?

2 If the minute I asked you the question,  
3 all of a sudden you're going to back pedal  
4 because maybe, just maybe, the government did  
5 its homework and read the records? If you knew  
6 it was 13, why didn't you say it first? Why  
7 would he tell you it was 11 or 12, when he knew  
8 it wasn't true?

9 Because Dr. Duck, I submit to you,  
10 crossed the line. Dr. Duck is advocating a  
11 position, and I do ask you to view his testimony  
12 in that light.

13 You look at what he said.

14 Now, Jamain presented a lot of people  
15 from the community. They don't know he's a drug  
16 dealer, or they don't want to say.

17 If they don't know he's a drug dealer,  
18 they don't know Jamain. If they don't want to  
19 say, are they worthy of your consideration? You  
20 have to decide.

21 Davina Terry, his sister-in-law, he's  
22 given money to her, for her son, for a whole  
23 family, she said. But she doesn't know Jamain's  
24 a drug dealer? She doesn't know, or she doesn't  
25 want to say?

1           If she doesn't know, she doesn't know  
2 Jamain. If she doesn't want to say, because  
3 she's in here trying to save his life, is she  
4 worthy of your belief? You have to decide.

5           Now, Ms. Terry said something else.  
6 She said, he would even get Rakia. He had a  
7 relationship with that little girl. He cared  
8 for that little girl. He took her out when he  
9 took his own daughter out.

10          We know who Rakia is. That's Karriem  
11 Washington's daughter. So when we talk about  
12 the impact that their execution will have on  
13 their children, I want you to think about  
14 something. It didn't matter to Jamain. Rakia's  
15 tears, loss, the affects that that child will  
16 have, according to Dr. Bornfriend, didn't matter  
17 to him.

18          There's no evidence that Andre Cooper  
19 spent time with Rakia, but there is clear  
20 evidence from his own witness that he knew that  
21 child. Yet, he made a decision to deprive her  
22 of her father.

23          If he thought about the effect it would  
24 have on her, whatever he thought, it wasn't  
25 enough to stop him from making sure that her



1 father died.

2 Counsel is correct. These children  
3 have done nothing wrong to anyone. Jamaia,  
4 Artease and Jamain love their father. Little  
5 Dre and Tahaj love their father and, yes, make  
6 no mistake about it. The loss of their fathers  
7 will have an affect on them.

8 But Tracy's kids loved her, too.  
9 Rock's kids loved him, too. Maybe Antonio would  
10 have had some kids. Who knows? Maybe Randolph  
11 would have had some kids. Who knows?

12 But the bottom line is this. When they  
13 pulled the trigger, they weren't concerned about  
14 their kids or anybody else's. He wasn't  
15 concerned about Jamaia, Artease or Jamain when  
16 he was out there killing people. He wasn't. If  
17 he was, it wasn't enough. He wasn't concerned  
18 about Dre and Tahaj. And if he was, it wasn't  
19 enough to stop him.

20 They come before you and say, look at  
21 the impact on these children. Look at it  
22 because it is real. They're clients. Neither  
23 of these defendants cared about that. Do they  
24 love their children?

25 Based on the phone calls, I would have

1 to say yes. I think he loves his children, and  
2 I think he loves his children. Does he love  
3 them enough not to be a murderer? I submit to  
4 you, the evidence says no.

5 Now, I just have two more points.

6 There are more people on Boyle Street  
7 than Jamain Williams and Andre Cooper. There  
8 are other people on Boyle Street on that  
9 indictment who were charged with the same crimes  
10 they were charged in.

11 Counsel says to you, where are they?  
12 The easy answer is, they are not here. The  
13 question for you, because it is clearly one of  
14 their mitigators, is whether or not these people  
15 who are equally culpable do not sit here facing  
16 death.

17 Now, to answer that question, you have  
18 to look at each murder and each person's role in  
19 the murder. For example, when counsel says to  
20 you, where is Mark Rogers?

21 Well, Mark Rogers is not involved in  
22 the murder of Antonio Rykard. You don't have to  
23 think about Mark Rogers in that murder because  
24 he doesn't come on that scene until after  
25 Antonio Rykard is dead.

1           So the question there is, is Vincent  
2 equally culpable to Andre? You have to decide.

3           Mr. Ricco said Vincent is the guy who  
4 sat here and stared throughout the trial. I  
5 didn't look at him that much. I don't know.  
6 But is the guy who they said sat here and stared  
7 throughout the trial more culpable than the guy  
8 that picked the day the boy would die? He's not  
9 just a driver.

10           Remember Mr. Ricco said that? "The  
11 driver." Is he just a driver? I'm sorry, I  
12 thought the evidence was that Andre Cooper chose  
13 the day that Antonio Rykard would die. You look  
14 back at the evidence.

15           Andre Cooper picked up Antonio Rykard  
16 off the street and delivered him, knowingly and  
17 intentionally, into the arms of Vincent  
18 Williams.

19           Andre Cooper drove that car out of  
20 Chester because they had just killed somebody  
21 three days earlier. Andre Cooper picked the  
22 day, the place and the time that Antonio Rykard  
23 would die.

24           Is he just a driver? You have to  
25 decide.

1 Vincent Williams, no doubt, pulled that  
2 trigger. Are they equally culpable, or is he  
3 more? You have to decide.

4 In the murder of Tracy Saunders,  
5 everybody in that gang had a role. But there  
6 were years of participation. There were the had  
7 to do it, didn't have to do it, and the had to  
8 do its. What group are they in? The didn't  
9 have to do its. Who wielded the power? They  
10 did. Who chose who's sitting there? They did.

11 MR. RICCO: Your Honor, I object to  
12 "they."

13 MS. TAYLOR: Andre Cooper and Jamain  
14 Williams did.

15 THE COURT: Overruled.

16 MS. TAYLOR: That's who the "they" is.

17 Who decided who was going to take  
18 shifts and when they would begin? Jamain  
19 Williams.

20 Who sat out there every night to make  
21 sure it was done? Jamain Williams.

22 And who was going to drive away Mark  
23 Rogers? Andre Cooper.

24 Who told Brian Rogers, the guy who  
25 didn't want to do it, who took the last shift

1 after there was nobody left, who told Brian  
2 Rogers -- first of all, who gave him the stuff?  
3 Andre Cooper. Gun, gloves, mask. He put it in  
4 his hands.

5 Who discussed the escape route with  
6 him? Andre Cooper.

7 Who was sitting out there the whole  
8 time Brian Rogers is laying in wait? Andre  
9 Cooper.

10 Who was holding Brian Rogers' stuff?  
11 Andre Cooper.

12 Who was about to call the shift off?  
13 Only one man had that power, Jamain Williams.

14 Who saw Tracy Saunders and said get  
15 her? Jamain Williams.

16 Who drove the killer away to safety?  
17 Andre Cooper.

18 Who told him what to wash with? Who  
19 told him to wash with bleach to get the stuff  
20 off of him? Andre Cooper.

21 Ladies and gentlemen, Brian Rogers  
22 pulled that trigger. There is no doubt about  
23 that. But Brian Rogers was not in charge.  
24 Jamain Williams was in charge, and Andre Cooper  
25 was in charge. Ultimately, you have to decide

1     that.

2                 Now, I don't believe Mr. Hill made an  
3     argument as to equal culpability with regard to  
4     Randolph Harris. If he did, you will recall the  
5     testimony because, as to that homicide, I submit  
6     to you, there is no doubt that there is no one  
7     more culpable than Jamain Williams.

8                 Now, let me comment on Mr. Hill's  
9     points, the goodness that is Jamain. He buys  
10    Pampers for people. He helps people into the  
11    house. He gets food for ladies who are  
12    depressed. He buys basketball courts for the  
13    neighborhood. He buys basketball sneakers for  
14    some kids on a team. What's that about? What's  
15    that about?

16                Mr. Hill says it's about goodness. Let  
17    me offer you an alternative. It's about  
18    control. It's about a benevolent kid. I run  
19    this neighborhood. I take care of my people.  
20    What does that engender to me? Loyalty.

21                When the cops want to know who did  
22    something, I ain't telling on Jamain. Jamain is  
23    an all right drug dealer. There's a thing in  
24    the ghetto called the good drug dealer. Think  
25    about it.

1           Jamain told those people on that block,  
2 I run this. This is my block. And so he took  
3 care of --

4           MR. HILL: Your Honor, I'm going to  
5 object. There is no evidence in the record.

6           MS. TAYLOR: Your Honor, Stephanie  
7 Jones testified to it.

8           THE COURT: Overruled.

9           MS. TAYLOR: He took care of those  
10 people. When niceness didn't work, he used  
11 force and he used threats. Is it the goodness  
12 in Jamain? Maybe it is. Is it more control? I  
13 submit to you, it is.

14           Now, in the end, the Court, in a few  
15 minutes, is going to give you the law of this  
16 case. Unlike anything else you have ever had to  
17 do, this is a moral judgment. There is no doubt  
18 about that. It's a judgment that you could base  
19 on mercy. The Court will tell you that. It's a  
20 judgment that you can base on hope. The Court  
21 will tell you that.

22           As Mr. Ricco said -- and I wrote it  
23 down because I wanted to read it to you  
24 properly. "The death penalty can be appropriate  
25 if it is a reasoned, moral response to the crime

1 and the person convicted of doing it."

2 The question that the government has  
3 for you is simply this: Is the death penalty a  
4 reasoned, moral response to three murders? Is  
5 the death penalty a reasoned, moral response to  
6 three planned and premeditated murders? Is it a  
7 reasoned, moral response to killing two people  
8 solely, solely because they were cooperating  
9 with law enforcement? Because it's certainly  
10 not a numbers game.

11 If you would go back and add up all of  
12 the mitigators, each of these defendants  
13 probably has more than 20. The government has  
14 but four. So don't go back there, I submit to  
15 you, and say, all things being equal, 20 is  
16 bigger than four, 20 is bigger than four, so the  
17 penalty is life. No.

18 Go back there, and accept every  
19 mitigator they give you, consider it, and then  
20 weigh it against each of the government's  
21 aggravators. Weigh it, and then make your  
22 decision.

23 Now, one of you, just one -- counsel is  
24 so correct about that -- just one of you can  
25 stop this process.



1 MR. RICCO: Objection to that term,  
2 Judge --

3 MS. TAYLOR: I'll rephrase it.

4 MR. RICCO: -- "stop this process."

5 MS. TAYLOR: I'll rephrase it.

6 Just one of you, by your verdict, can  
7 vote and the sentence for each of these  
8 defendants would be life.

9 The government would ask you to do  
10 this: Before you find reasons, before you  
11 search for reasons for life, be honest with  
12 yourself. Be honest with yourself.

13 This is a hard decision. It is a  
14 decision that we trusted you all with. It is  
15 not easy, I submit to you, to sentence a man to  
16 spend the rest of his life in prison. That's  
17 not easy. But it certainly is not easy to  
18 decide that, because of what they have done,  
19 they must die.

20 Now, just because it isn't easy,  
21 doesn't mean that it isn't necessary, doesn't  
22 mean that it isn't appropriate, doesn't mean  
23 that it isn't proper. You are not killing them.

24 Counsel over and over, "if you kill  
25 them." You're not killing them. Don't think

1     that.  Don't say, I couldn't kill, so I won't  
2     kill.  Think; what is the appropriate penalty  
3     for what they have done?

4             Mr. Ricco says, "Be radical.  Do  
5     something radical.  Vote for life."  I say, be  
6     true to yourself, and vote for justice.  If  
7     justice is life, sobeit.  Sobeit.

8             If justice is life for Jamain Williams,  
9     give him life.  If justice is life for Andre  
10    Cooper, give him life.

11            But if it is not, don't hide behind  
12    justice.  Don't hide behind fears, if it's not.  
13    If what is right, if what is just, if what is  
14    fair, is that Jamain Williams should be  
15    sentenced to death, then do something radical.  
16    Do something courageous.  Sentence him to death.  
17    Not because it's easy, but because it's right.

18            If what is right, if what is fair, if  
19    what is just is that Andre Cooper should be  
20    sentenced to death, then, in Mr. Ricco's words,  
21    "Do something radical."  Sentence him to death.

22            But whatever you do, be true.  Be true  
23    to who you are and what you believe is right  
24    under the law.

25            Thank you.

1 THE COURT: Thank you, Ms. Taylor.

2 Ladies and gentlemen, we're going to  
3 take our morning break now. We'll be in recess  
4 for 15 minutes.

5 Please do not talk about the case among  
6 yourselves or with others. We'll see you  
7 shortly.

8 You're excused.

9 (The jury exited the courtroom at  
10 11:05 a.m.)

11 THE COURT: Are there any objections  
12 that you want to place on the record, pursuant  
13 to Ms. Taylor's argument, other than the ones  
14 that were made during the course of the  
15 argument?

16 MR. SWEENEY: If we could have a brief  
17 moment?

18 THE COURT: Sure.

19 MR. RICCO: Judge, while they are  
20 taking their moment, I have just one thing.

21 Judge, I raise this objection. I'm  
22 pretty sure that Ms. Taylor, in describing the  
23 contemporaneous convictions, made the comment  
24 that the death penalty should be imposed with  
25 three murders, and then she went on to talk

1 about contemporaneous convictions.

2 Earlier in the case, what we requested  
3 is that if the government is going to argue that  
4 three murders, in and of itself, qualifies the  
5 defendant for the death penalty, then we should  
6 have had an opportunity to show that where there  
7 are circumstances where there are more murders,  
8 it is not a qualifier.

9 Now, Ms. Taylor said the term, but then  
10 she went into the facts of this case. I'm not  
11 sure if she just misspoke, or if that's just,  
12 you know, of the moment.

13 But, Judge, my position is that the  
14 government certainly is entitled to argue that,  
15 in this case, three murders can be a basis for  
16 the jury to find the death penalty, but the  
17 government cannot argue that three murders, in  
18 and of themselves, does that. I think when you  
19 take the government's argument in the whole,  
20 that's what they conveyed.

21 But the statement was made, and we  
22 object to it for the same reasons that we  
23 objected to the opening arguments that  
24 Ms. Winter made, because we wanted to have an  
25 opportunity to present that evidence.

1 THE COURT: Very well.

2 MR. RICCO: But I would concede that,  
3 on the whole, what Ms. Taylor, I believe, was  
4 attempting to argue to the jury was that, in  
5 this case, the death penalty should be --

6 THE COURT: Very well.

7 Any comments in that regard,  
8 Ms. Taylor?

9 MS. TAYLOR: No, Your Honor, just that  
10 that was the government's argument in this case,  
11 that the three murders were linked to the  
12 non-statutory aggravator of contemporaneous  
13 convictions.

14 THE COURT: Very well.

15 Your objection is overruled.

16 And do you join in that?

17 MR. HILL: Yes.

18 THE COURT: Any additional ones?

19 MR. HILL: Yes.

20 THE COURT: Yes, Mr. Hill?

21 MR. HILL: Judge, as I objected during  
22 the argument, there is no evidence in the record  
23 about "good drug dealer" and "control." There  
24 is no evidence about any impact on Rakia that  
25 was argued here in rebuttal. There is no

1 evidence to that in the record at all.

2 Ms. Taylor indicated that she thought  
3 that this was a one-on-one weighing process, the  
4 jury was supposed to do that. In other words,  
5 the implication is that one aggravator should be  
6 weighed against one mitigator, but that's not  
7 the way it works. It's the totality and  
8 whatever other thing they want to do. It's up  
9 to them. And so, that is misleading.

10 She instructed the jury not to hide  
11 behind their fears. I think that's an improper  
12 argument at this time.

13 What they have to be instructed on is  
14 how to go about weighing these aggravators and  
15 mitigators, and look inside themselves to find  
16 out what is important.

17 She made an argument that is unfair to  
18 Mr. Williams, because she said the killing of  
19 two people cooperating with police is enough  
20 reason to give a death penalty.

21 Well, Jamain has not been convicted of  
22 two killings of people cooperating with police.  
23 That's not true here. And so her argument was  
24 an argument that she did not sufficiently  
25 distinguish from Jamain.

1 I think it's an improper argument  
2 because of that, that the implication now is  
3 that he's wrapped up in that as well.

4 THE COURT: Before you go, just so that  
5 everybody knows, there's not going to be any  
6 running in and out while the Court is  
7 instructing the jury on the law in this case.

8 I noticed that there was some running  
9 in and out while counsel was closing, but there  
10 will be none of that when I instruct the jury.

11 So if you are coming in, be here before  
12 I instruct the jury. If not, you'll be locked  
13 out or kept out by the Marshal. All right.

14 That goes for anybody in the audience.  
15 Yes?

16 MR. HILL: I think the government  
17 improperly diminished the jury's role in the  
18 sentencing function here when she told them,  
19 you're not going to be killing anyone. I think  
20 what she is doing is minimizing their role in  
21 this. The jury will be the entity that issues  
22 that decision.

23 THE COURT: They won't be killing  
24 anyone, though. They will be issuing a sentence  
25 of death.

1           MR. HILL: Technically, it will be  
2 someone else that pushes the buttons,  
3 technically. But that button can't be pushed if  
4 their verdict is a life verdict. That button  
5 can only be pushed if they have the  
6 responsibility for doing it.

7           She minimized that responsibility,  
8 trying to act like, hey, it's okay. It's okay,  
9 somebody else will take responsibility for this.  
10 That's an improper argument in a death penalty  
11 case because the responsibility is theirs  
12 completely, totally and 100 percent. We can't  
13 instruct them in any other way, but that.

14          THE COURT: Very well. Your objections  
15 are overruled.

16          I think the argument of the government,  
17 in toto, not picking out one word or one  
18 sentence or one phrase, was an appropriate  
19 argument in this case.

20          Further, this Court will instruct the  
21 jurors on the appropriate law to apply in their  
22 deliberation process.

23          We will be in recess for ten minutes  
24 now.

25          Yes, Mr. Egan?



1           MR. EGAN: Your Honor, we didn't get a  
2 corrected verdict sheet.

3           THE COURT: I'm getting ready to pass  
4 those out now before we pass them out to the  
5 jury.

6           If counsel will assist me, take one  
7 each.

8           (Recess was held at 11:13 a.m.)

9           (The Court resumed the proceedings at  
10 11:20 a.m., at which time the jury entered the  
11 courtroom.)

12          THE COURT: Good morning, again, ladies  
13 and gentlemen.

14          Ladies and gentlemen, now that you have  
15 heard all the evidence in the case and the  
16 arguments of counsel, it now becomes my duty to  
17 give you instructions as to the law applicable  
18 to the most serious questions upon which you  
19 must decide.

20          One, whether Jamain Williams should be  
21 put to death or imprisoned for life without the  
22 possibility of release.

23          Two, whether Andre Cooper should be put  
24 to death or imprisoned for life without the  
25 possibility of release.

1           Regardless of any opinion you may have  
2     as to what the law may be or should be, it would  
3     be a violation of your oath as jurors to base  
4     your verdict upon any view of the law, other  
5     than that given to you in these instructions.

6           Some of the legal principles that you  
7     must apply to the sentencing decision duplicate  
8     those you followed in reaching your verdict as  
9     to guilt or innocence.

10          While I'm on this point, let me remind  
11     you, ladies and gentlemen, the statements and  
12     arguments of counsel are not evidence. It is  
13     your recollection of the testimony in evidence  
14     and evidence that governs.

15                 Is that understood?

16                 THE JURORS: Yes, Your Honor.

17                 THE COURT: I further instruct you that  
18     if you find any difference in the statements of  
19     law that counsel has given you in their closing  
20     summations, it is the instructions of the Court  
21     that you must follow.

22                 Is that understood?

23                 THE JURORS: Yes, Your Honor.

24                 THE COURT: As I was saying, some of  
25     these legal principles that you applied in the

1 earlier phase apply to this phase, the  
2 sentencing phase. Others are different.

3 The instructions I am giving you now  
4 are a complete set of instructions on the law  
5 applicable to the sentencing decision. I have  
6 prepared them to insure that you are clear in  
7 your duties at this extremely serious stage of  
8 the case.

9 I have also prepared a Special Verdict  
10 Form that you must complete in reference to each  
11 of these individual defendants. The form  
12 details special findings you must make in this  
13 case, and will help you perform your duties  
14 properly.

15 Ladies and gentlemen, I'm going to pass  
16 out now to you these Special Verdict Forms as  
17 they pertain to each of these defendants.

18 I tell you this, also. You will each  
19 get a copy of the Court's instructions in your  
20 deliberations so you'll have the Court's  
21 instructions, and you'll have an individual  
22 verdict slip and I will go through the verdict  
23 slip in a brief form because, as you will see,  
24 it is very detailed. All right?

25 Mr. Wolfe, if you would be so kind,

1 would you pass out those Special Verdict Forms.

2 (The Special Verdict Forms were  
3 distributed to the jury.)

4 Ladies and gentlemen, I'll give you a  
5 moment just to open them up and look at them  
6 briefly. I'm going to go through it briefly  
7 with you as I instruct you on the law applicable  
8 to each section that you will have in the  
9 verdict slip and what your duties and  
10 responsibilities are.

11 (Jurors complied.)

12 Ladies and gentlemen, as you can notice  
13 and as you should notice, they are different,  
14 and the reason being that these two defendants  
15 were found guilty of different counts.

16 As you can see from the first page,  
17 dealing with Jamain Williams, your findings will  
18 be based on Count 10, dealing with the murder of  
19 Tracy Saunders in the aid of racketeering;

20 Count 11, Murder of the witness, Tracy  
21 Saunders, to prevent testimony;

22 Count 18, The murder of Randolph Harris  
23 in the aid of racketeering;

24 Count 19, Using and carrying a firearm  
25 during and in relation to the murder of Randolph

1 Harris;

2 And Count 22, The murder of Karriem  
3 Washington in aid of racketeering.

4 Those are the counts that you found  
5 Jamain Williams guilty of.

6 As to Andre Cooper, your findings will  
7 pertain to Count 10, Murder of Tracy Saunders in  
8 aid of racketeering;

9 Count 11, Murder of the witness, Tracy  
10 Saunders, to prevent testimony;

11 Count 15, The murder of Antonio Rykard  
12 in aid of racketeering;

13 Count 22, The murder of Karriem  
14 Washington in aid of racketeering;

15 And Count 23, Using and carrying a  
16 firearm during and in relation to the murder of  
17 Karriem Washington.

18 Ladies and gentlemen, as you can see  
19 from the Special Verdict Form, each of these  
20 forms is broken up into seven sections.

21 The first section deals with the  
22 Defendants' Age at the Time of the Offense.

23 The second deals with Gateway Factors.

24 The third deals with Statutory  
25 Aggravating Factors.

1           The fourth deals with Non-statutory  
2 Aggravating Factors.

3           The fifth deals with Mitigating  
4 Factors.

5           The sixth deals with Determination of  
6 Sentence.

7           The seventh section deals with  
8 Certification.

9           I will now instruct you on each of  
10 these sections. I tell you this also, that the  
11 Court's instructions will be captioned dealing  
12 with the sections that you will be considering,  
13 also, so that it correlates to the particular  
14 section of the verdict slip, if you are  
15 considering that portion of the verdict slip.  
16 All right?

17           Starting off with Section I. Ladies  
18 and gentlemen, before you may consider the  
19 imposition of the death penalty, you must first  
20 unanimously agree beyond a reasonable doubt that  
21 the defendant was 18 years of age or older at  
22 the time of the offense.

23           If you unanimously make that finding,  
24 you should so indicate on the appropriate page  
25 of the Special Verdict Form and continue your

1 deliberations.

2 If you do not unanimously make that  
3 finding, you should so indicate on the  
4 appropriate page of the Special Verdict Form,  
5 and follow the directions on the form.

6 No further deliberations will be  
7 necessary on those offenses that you find the  
8 defendant was not over the age of 18, 18 or  
9 older.

10 Ladies and gentlemen, as you can see,  
11 in the Special Verdict Form, Section I deals  
12 with the defendant's age at the time of the  
13 offense. It has directions at the top of the  
14 page. It pertains to each of the counts that  
15 you have to deal with, with each individual  
16 defendant on each individual Special Verdict  
17 Form. You are to respond pursuant to your  
18 deliberations. All right?

19 At the bottom of the page -- this is  
20 consistent with each of these sections. There  
21 are instructions at the top of the page. There  
22 are directions at the bottom of the page.

23 On some of the pages, you will see  
24 oblong boxes that are doubled boxes. They will  
25 be reminders that you have to do a certain -- or

1 find a certain fact or perform a certain  
2 function before you can proceed on to the next  
3 area. All right?

4 Moving on. That's Section I.

5 Section II deals with Gateway Factors,  
6 or finding of the requisite mental state.

7 Ladies and gentlemen, as you know, the  
8 defendants, Jamain Williams and Andre Cooper,  
9 have each been convicted of murders of three  
10 people; Jamain Williams, of the murder of Tracy  
11 Saunders, Randolph Harris, and Karriem  
12 Washington; Andre Cooper, of the murders of  
13 Tracy Saunders, Antonio Rykard, and Karriem  
14 Washington.

15 Before you may consider the imposition  
16 of the death penalty for any one or all of those  
17 murders, you must unanimously find beyond a  
18 reasonable doubt that the defendant either  
19 intentionally killed the victim named in the  
20 indictment, or intentionally participated in an  
21 act contemplating that the life of a person  
22 would be taken in one of the manners described  
23 below.

24 If you unanimously make that finding,  
25 you should so indicate on the appropriate page



1 of the Special Verdict Form, and continue your  
2 deliberations.

3 If you do not unanimously make that  
4 finding, you should so indicate on the  
5 appropriate page of the Special Verdict Form,  
6 and follow the directions on the form. No  
7 further deliberations will be necessary as to  
8 any count for which you do not unanimously make  
9 that finding.

10 I will now outline for you the intent  
11 which the government alleges -- and I say  
12 "alleges" because that's what they allege -- you  
13 have to determine whether or not it's been  
14 proven or not. They allege as to each of the  
15 two defendants for each of the counts.

16 As to Counts 10 and 11, involving the  
17 murder of Tracy Saunders, the government alleges  
18 that Jamain Williams intentionally participated  
19 in an act contemplating that the life of a  
20 person would be taken, or intending that lethal  
21 force would be used in connection with a person,  
22 other than one of the participants in the  
23 offense, and that Tracy Saunders died as a  
24 direct result of that act, by ordering or  
25 directing that another should kill Tracy

1     Saunders by shooting her, or by providing  
2     assistance and direction to the shooter of  
3     Tracy, which directly resulted in the death of  
4     Tracy Saunders.

5             The government must prove that the  
6     defendant deliberately directed or ordered the  
7     killing of Tracy Saunders or provided assistance  
8     and directions to the shooter of Tracy Saunders  
9     with a conscious desire that a person be killed,  
10    or that lethal force be employed against a  
11    person.

12            The phrase "lethal force" means an act  
13    or acts of violence capable of causing death.

14            The government further alleges that  
15    Jamain Williams intentionally and specifically  
16    engaged in an act of violence knowing that the  
17    act created a grave risk of death to a person,  
18    other than one of the participants in the  
19    offense, such that participation in the act  
20    constituted a reckless disregard for human life,  
21    and Tracy Saunders died as a direct result of  
22    the act, by ordering or directing that another  
23    should kill Tracy Saunders by shooting her, and  
24    by providing assistance and direction to the  
25    shooter of Tracy Saunders.

1           The government alleges that Andre  
2 Cooper intentionally participated in an act  
3 contemplating that the life of a person would be  
4 taken or intending that lethal force would be  
5 used in connection with a person other than one  
6 of the participants in the offense, and that  
7 Tracy Saunders died as a direct result of that  
8 act, by ordering or directing that another  
9 should kill Tracy Saunders by shooting her, or  
10 by providing assistance and direction to the  
11 shooter of Tracy, which directly resulted in the  
12 death of Tracy Saunders.

13           The government must prove that the  
14 defendant deliberately directed or ordered the  
15 killing of Tracy Saunders, or provided  
16 assistance and direction to the shooter of Tracy  
17 Saunders with a conscious desire that a person  
18 be killed, or that lethal force be employed  
19 against a person.

20           Remember, again, the phrase "lethal  
21 force" means an act or acts of violence capable  
22 of causing death.

23           The government further alleges that  
24 Andre Cooper intentionally and specifically  
25 engaged in an act of violence, knowing that the

1 act created a grave risk of death to a person,  
2 other than one of the participants in the  
3 offense, such that participation in the act  
4 constituted a reckless disregard for human life,  
5 and Tracy Saunders died as a direct result of  
6 the act, by ordering or directing that another  
7 should kill Tracy Saunders by shooting her, and  
8 by providing assistance and direction to the  
9 shooter of Tracy Saunders.

10 As to Count 15, involving the murder of  
11 Antonio Rykard, the government alleges that  
12 Andre Cooper intentionally participated in an  
13 act contemplating that the life of a person  
14 would be taken, or intending that lethal force  
15 would be used in connection with a person, other  
16 than one of the participants in the offense, and  
17 that Antonio Rykard died as a direct result of  
18 that act, by deciding when Antonio Rykard would  
19 be killed, selecting the location where Antonio  
20 Rykard was to be killed, and driving Antonio  
21 Rykard to the location where he was to be  
22 killed, which directly resulted in the death of  
23 Antonio Rykard.

24 The government must prove that the  
25 defendant deliberately decided when Antonio

1 Rykard would be killed, selected the location  
2 where Antonio Rykard was to be killed, or drove  
3 Antonio Rykard to the location where he was to  
4 be killed with a conscious desire that a person  
5 be killed, or that lethal force be employed  
6 against a person.

7 The phrase "lethal force" means an act  
8 or acts of violence capable of causing death.

9 The government further alleges that  
10 Andre Cooper intentionally and specifically  
11 engaged in an act of violence, knowing that the  
12 act created a grave risk of death to a person,  
13 other than one of the participants in the  
14 offense, such that participation in the act  
15 constituted a reckless disregard for human life,  
16 and that Antonio Rykard died as a direct result  
17 of the act, by selecting the location where  
18 Antonio Rykard was to be killed, and driving  
19 Antonio Rykard to the location where he was to  
20 be killed.

21 As to Counts 18 and 19, involving the  
22 murder of Randolph Harris, the government  
23 alleges that Jamain Williams intentionally  
24 killed Randolph Harris by shooting him multiple  
25 times.

1           To establish that the defendant  
2 intentionally killed the victim, the government  
3 must prove that the defendant killed the victim  
4 with a conscious desire to cause the victim's  
5 death.

6           The government alleges that Jamain  
7 Williams intentionally inflicted serious bodily  
8 injury that resulted in the death of Randolph  
9 Harris, by shooting Randolph Harris multiple  
10 times which resulted in the death of Randolph  
11 Harris.

12           The government must prove that the  
13 defendant deliberately caused serious injury to  
14 the victim's body, which, in turn, caused the  
15 victim's death.

16           "Serious bodily injury" means a  
17 significant or considerable amount of injury,  
18 which involves a substantial risk of death,  
19 unconsciousness, extreme physical pain,  
20 protracted and obvious disfigurement or  
21 protracted loss or impairment of a body member,  
22 organ, or mental faculty.

23           As to Count 22, involving the murder of  
24 Karriem Washington, the government alleges that  
25 Jamain Williams intentionally participated in an

1 act contemplating that the life of a person  
2 would be taken, or intending that lethal force  
3 would be used in connection with a person, other  
4 than one of the participants in the offense, and  
5 that Karriem Washington died as a direct result  
6 of that act, by driving the vehicle so that he  
7 enabled the shooter, Andre Cooper, to be in a  
8 position to shoot at Karriem Washington, which  
9 directly resulted in the death of Karriem  
10 Washington.

11 The government must prove that the  
12 defendant deliberately drove the vehicle  
13 containing the agreed-upon shooter with a  
14 conscious desire that a person be killed, or  
15 that lethal force be employed against a person.

16 Recall the definition of "lethal  
17 force." It means an act or acts of violence  
18 capable of causing death.

19 Further, the government alleges that  
20 Jamain Williams intentionally and specifically  
21 engaged in an act of violence, knowing that the  
22 act created a grave risk of death to a person,  
23 other than one of the participants in the  
24 offense, such that participation in the act  
25 constituted a reckless disregard for human life,

1 and Karriem Washington died as a direct result  
2 of the act, by driving the vehicle so that  
3 enabled the shooter, Andre Cooper, to be in a  
4 position to shoot at Karriem Washington.

5 The government alleges that Andre  
6 Cooper intentionally killed Karriem Washington  
7 by shooting him multiple times.

8 To establish that the defendant  
9 intentionally killed the victim, the government  
10 must prove that the defendant killed the victim  
11 with the conscious desire to cause the victim's  
12 death.

13 The government further alleges that  
14 Andre Cooper intentionally inflicted serious  
15 bodily injury that resulted in the death of  
16 Karriem Washington, by shooting Karriem  
17 Washington multiple times, which resulted in the  
18 death of Karriem Washington.

19 The government must prove that the  
20 defendant deliberately caused serious injury to  
21 the victim's body, which, in turn, caused the  
22 victim's death.

23 "Serious bodily injury" means a  
24 significant or considerable amount of injury,  
25 which involved a substantial risk of death,



1 unconsciousness, extreme physical pain,  
2 protracted and obvious disfigurement, or  
3 protracted loss or impairment of a body member,  
4 organ, or mental faculty.

5 As to Count 23, members of the jury,  
6 involving the murder of Karriem Washington, the  
7 government alleges that Andre Cooper  
8 intentionally killed Karriem Washington by  
9 shooting Karriem Washington multiple times.

10 To establish that the defendant  
11 intentionally killed the victim, the government  
12 must prove that the defendant killed the victim  
13 with the conscious desire to cause the victim's  
14 death.

15 The government further alleges that  
16 Andre Cooper intentionally inflicted serious  
17 bodily injury that resulted in the death of  
18 Karriem Washington, by shooting Karriem  
19 Washington multiple times, which resulted in the  
20 death of Karriem Washington.

21 The government must prove that the  
22 defendant deliberately caused serious injury to  
23 the victim's body, which, in turn, caused the  
24 victim's death.

25 "Serious bodily injury" means a

1 significant or considerable amount of injury,  
2 which involved a substantial risk of death,  
3 unconsciousness, extreme physical pain,  
4 protracted and obvious disfigurement, or  
5 protracted loss or impairment of a body member,  
6 organ, or mental faculty.

7 Intent or knowledge may be proved like  
8 anything else. You may consider any statement  
9 made and acts done by the defendant and all the  
10 facts and circumstances in evidence, which may  
11 aid in the determination of the defendant's  
12 knowledge or intent.

13 You may, but are not required to, infer  
14 that a person intends the natural and probable  
15 consequences of acts knowingly done or knowingly  
16 omitted.

17 So, ladies and gentlemen, as it relates  
18 to Section II, dealing with the Gateway Factors,  
19 as you go through this section, if you get to  
20 this section, pursuant to your deliberations --  
21 and I say that because obviously you have to  
22 find the first section, the Age Requirement --  
23 when you go through this, you have to answer  
24 each of the questions posed to you, each of the  
25 statements posed to you, and you have to respond

1 to whether or not it's proven or not proven. how

2 As I stated, each of these Special  
3 Verdict Forms pertain to each individual  
4 defendant. I will instruct you on that a little  
5 later in these instructions, that these  
6 defendants are separate, and you should consider  
7 them separate in all aspects; the aggravating  
8 factors, the mitigating factors. All right?

9 Moving on. The next section of these  
10 Special Verdict Forms deals with Section III.  
11 These are Statutory Aggravating Factors.

12 Again, ladies and gentlemen, if you  
13 unanimously find beyond a reasonable doubt that  
14 a defendant intentionally committed the murder  
15 of or committed acts resulting in the death of  
16 any of the victims in the manner described in  
17 the preceding instructions, you must then  
18 proceed to determine whether the government has  
19 proved beyond a reasonable doubt the existence  
20 of the following alleged statutory aggravating  
21 factors with respect to the same murders.

22 The government has alleged the  
23 statutory aggravating factors of substantial  
24 planning and premeditation as to all four  
25 murders.

1           The government also alleges an  
2 additional statutory aggravating factor  
3 applicable to the murder of Randolph Harris.  
4 That statutory aggravating factor is that the  
5 defendant, Jamain Williams, knowingly created a  
6 grave risk of death to another person, David  
7 Jones, in the commission of the offense.

8           If you unanimously make that finding in  
9 the affirmative, you should so indicate in  
10 Section III, on the appropriate page of the  
11 Special Verdict Form, and continue your  
12 deliberations.

13           If you do not unanimously make that  
14 finding in the affirmative, you should so  
15 indicate on the appropriate page of the Special  
16 Verdict Form, and follow the directions on the  
17 form.

18           No further deliberation will be  
19 necessary as to any murder for which you do not  
20 unanimously make a unanimous finding as to that  
21 alleged statutory aggravating factor.

22           The law directs you to consider and  
23 decide, at this point, the existence or  
24 non-existence of only the statutory aggravating  
25 factors specifically claimed by the government.

1           You are reminded that to find the  
2       existence of a statutory aggravating factor,  
3       your decision must be unanimous and beyond a  
4       reasonable doubt.

5           Ladies and gentlemen, the government  
6       alleges that the defendants committed the  
7       offenses charged in Counts 10 and 11, regarding  
8       the murder of Tracy Saunders;

9           Count 15, regarding the murder of  
10      Antonio Rykard;

11          Counts 18 and 19, regarding the murder  
12      of Randolph Harris;

13          And Counts 22 and 23, regarding the  
14      murder of Karriem Washington of the indictment,  
15      for which you have found them guilty after  
16      substantial planning and premeditation to cause  
17      the deaths of the victims named in those counts.

18          This is the first statutory aggravating  
19      factor that the government has alleged. I  
20      define planning and premeditation and  
21      substantial to you at this time.

22          "Planning" means mentally formulating a  
23      method for doing something or achieving some  
24      end.

25          "Premeditation" means thinking or

1     deliberating about something and deciding  
2     whether to do it beforehand.

3             "Substantial planning and  
4     premeditation" means a considerable or  
5     significant amount of planning and  
6     premeditation.

7             The government alleges an additional  
8     statutory aggravating factor applicable to  
9     Counts 18 and 19 regarding the murder of  
10    Randolph Harris.

11            That statutory aggravating factor is  
12    that the defendant, Jamain Williams, knowingly  
13    created a grave risk of death to another person,  
14    David Jones, in the commission of the offense  
15    when Jamain Williams shot Jones while killing  
16    Randolph Harris.

17            To establish the existence of this  
18    factor, the government must prove that the  
19    defendant knowingly created a grave risk of  
20    death to one or more persons in addition to the  
21    victim of the offense in committing the offense.

22            Persons, in addition to the victim,  
23    include innocent bystanders in the zone of  
24    danger created by the defendant's acts.

25            "Grave risk of death" means a

1 significant and considerable possibility that  
2 another person might be killed.

3 "Knowingly creating such a risk" means  
4 that the defendant was conscious and aware that  
5 his conduct in the course of committing the  
6 offense might have this result.

7 Knowledge may be proved like anything  
8 else. You may consider any statement made and  
9 acts done by the defendant and all the facts and  
10 circumstances in evidence, which may aid in the  
11 determination of the defendants' knowledge.

12 So, ladies and gentlemen, consider  
13 Section III, Statutory Aggravating Factors, if,  
14 pursuant to your deliberations again, you get to  
15 this section, and follow the instructions at the  
16 top and indicate, pursuant to your  
17 deliberations, if you get to this page, whether  
18 or not the government has proven these statutory  
19 aggravating factors or not as to each of the  
20 individual defendants on each of their Special  
21 Verdict Forms.

22 Moving along to the Non-Statutory  
23 Aggravating Factors, which is Section IV.

24 Members of the jury, if you have found  
25 the existence of one statutory aggravating

1 factor, unanimously and beyond a reasonable  
2 doubt, you must then consider whether the  
3 government has proved the existence of any  
4 non-statutory aggravating factors.

5 As in the case for statutory  
6 aggravating factors, you must unanimously agree  
7 that the government has proved beyond a  
8 reasonable doubt the existence of any of the  
9 alleged non-statutory aggravating factors before  
10 you may consider such factors in your  
11 deliberations on the appropriate punishment for  
12 the defendants in this case.

13 In addition to any statutory  
14 aggravating factors you have found, or may find,  
15 you are permitted to consider and discuss only  
16 the non-statutory aggravating factors  
17 specifically claimed by the government, and  
18 listed below.

19 You must not consider any other facts  
20 in aggravation which you think of on your own.

21 I will now list for you the  
22 non-statutory aggravating factors alleged by the  
23 government.

24 In Counts 10 and 11, involving the  
25 murder of Tracy Saunders, the government



1     alleges -- again, they allege -- and you have to  
2     make that determination, pursuant to your  
3     deliberations, ladies and gentlemen, obviously  
4     if you get to this portion of the verdict form.

5             The government alleges three  
6     non-statutory aggravating factors, all of which  
7     apply to both Andre Cooper and Jamain Williams.  
8     Those three non-statutory factors are:

9             1) Impact on the Victim. The  
10    government alleges that the defendants caused  
11    injury, harm and loss to the family of the  
12    victim because of the victims' personal  
13    characteristics as an individual human being and  
14    the impact of the death upon the victim's  
15    family. The murder of the victim has caused the  
16    victim's family extreme emotional suffering, and  
17    the victim's family has suffered severe and  
18    irreparable harm.

19            2) Obstruction of Justice. The  
20    government alleges the defendants committed the  
21    offense with the intent to prevent the victim  
22    from providing information and assistance to law  
23    enforcement authorities in regard to the  
24    investigation or prosecution of the commission  
25    or possible commission of another offense.

1           3) Contemporaneous Convictions. The  
2 government alleged that the defendants committed  
3 and have been convicted of additional murders as  
4 charged in the indictment.

5           In Count 15, involving the murder of  
6 Antonio Rykard, the government alleged the same  
7 three non-statutory aggravating factors.  
8 However, in Count 15, those factors apply only  
9 to Andre Cooper and with respect to the  
10 "Obstruction of Justice" aggravating factor, it  
11 is alleged by the government that Cooper  
12 committed the offense with the intent to both  
13 prevent the victim from providing information  
14 and assistance to law enforcement, as well as  
15 with the intent to retaliate against the victim  
16 for having provided information to law  
17 enforcement.

18           In Counts 18 and 19, involving the  
19 murder of Randolph Harris, the government  
20 alleges two non-statutory aggravating factors,  
21 which apply only to Jamain Williams. Those two  
22 factors are:

- 23           1) The Impact on the Victim, and
- 24           2) The Contemporaneous Convictions.

25           The explanation of those factors that I

1 have just given you applies here as well.

2 In Counts 22 and 23, involving the  
3 murder of Karriem Washington, the government  
4 alleges the same two non-statutory aggravating  
5 factors as it alleges in Counts 18 and 19.  
6 However, in Count 22, those factors apply to  
7 both defendants, Andre Cooper and Jamain  
8 Williams, while, in Count 23, they apply only to  
9 Andre Cooper.

10 Members of the jury, you must record  
11 your findings regarding whether you unanimously  
12 find that the government has proven beyond a  
13 reasonable doubt the existence of any of these  
14 non-statutory aggravating factors. Please enter  
15 that finding on the appropriate page of the  
16 Special Verdict Form, and continue your  
17 deliberations.

18 Obviously, if the government has failed  
19 to prove unanimously those particular  
20 non-statutory aggravating factors, you're to  
21 indicate so by indicating not proven.

22 Moving on, ladies and gentlemen, to  
23 Section V, dealing with Mitigating Factors.

24 Members of the jury, before you may  
25 consider the appropriate punishment, you must

1 consider whether the defendant has established  
2 the existence of any mitigating factors.

3 A mitigating factor is a factor that  
4 favors a punishment of life imprisonment without  
5 release rather than the death penalty.

6 A mitigating factor is not offered to  
7 justify or excuse the defendant's conduct in  
8 committing murder. Rather, a mitigating factor  
9 is a fact about the defendant's life or  
10 character or about other circumstances that you  
11 find relevant that would suggest that a sentence  
12 of life in prison without any possibility of  
13 release is a more appropriate punishment than  
14 death.

15 Unlike aggravating factors, that I just  
16 went over with you, both the statutory and  
17 non-statutory, which you must unanimously find  
18 proved beyond a reasonable doubt in order to  
19 consider them in your deliberations, the law  
20 does not -- I repeat, does not -- require  
21 unanimous agreement with regard to mitigating  
22 factors.

23 Any juror persuaded of the existence of  
24 a mitigating factor must consider it in this  
25 case. Any one of you may individually and

1 independently find the existence of a mitigating  
2 factor, regardless of the number of other jurors  
3 who may agree, and any juror who so finds may  
4 weigh that factor.

5           Thus, if even a single member of the  
6 jury finds that a mitigating factor has been  
7 proved by a preponderance of the evidence, that  
8 member of the jury is allowed to weigh that  
9 factor in making up his or her own mind in  
10 weighing whether or not to vote for a death  
11 sentence.

12           Members of the jury, it is the  
13 defendant's burden to establish any mitigating  
14 factors, but only by a preponderance of the  
15 evidence. This is a lesser standard of proof  
16 under the law than proof beyond a reasonable  
17 doubt. A factor is established by a  
18 preponderance of the evidence if its existence  
19 is shown to be shown more likely so than not so.

20           In other words, "a preponderance of the  
21 evidence" means such evidence, as when  
22 considered and compared with that opposed to it,  
23 produces in your mind the belief that what is  
24 sought to be established is more likely than not  
25 true.

1           In Part V of the Special Verdict Form  
2 relating to mitigating factors, you are asked,  
3 but not required, to report the total number of  
4 jurors that find a particular mitigating factor  
5 established by a preponderance of the evidence.

6           As a matter of fact, let me check that  
7 out. You are required to put down the number of  
8 jurors who so find.

9           Looking at Section No. V, dealing with  
10 the mitigating factors, under each of these  
11 mitigating factors, you're to indicate the  
12 number of jurors who so find these mitigating  
13 factors.

14           Obviously, each of these mitigating  
15 factors are listed in the Special Verdict Form,  
16 but they are also included in the Court's  
17 instructions, and I will go over them for you at  
18 this time, and include it in the record.

19           The mitigating factors enumerated for  
20 Jamain Williams are as follows:

21           The defendant, Jamain Williams,  
22 asserted that he has proven by a preponderance  
23 of the evidence the following mitigating  
24 factors:

25           1. With respect to the murder of

1 Karriem Washington, Mark Rogers, an equally  
2 culpable individual, was not charged with the  
3 offense of the murder of Karriem Washington, and  
4 does not face either the death penalty or life  
5 imprisonment for that offense.

6 2. With respect to the murder of Tracy  
7 Saunders, Brian Rogers, an equally culpable  
8 individual, does not face the death penalty.

9 3. Jamain Williams grew up in an  
10 impoverished and dysfunctional environment.

11 4. Neither Jamain Williams' mother,  
12 nor his father, provided parental guidance or  
13 protection.

14 5. Jamain Williams was neglected in  
15 his youth and allowed to run the streets,  
16 thereby learning the ways of the street at an  
17 earlier age.

18 6. Jamain Williams' childhood was  
19 influenced by poor and/or indifferent parenting.

20 7. Jamain Williams grew up in a  
21 community in which drugs and violence were  
22 commonplace.

23 8. Jamain Williams suffered from a  
24 learning disability.

25 9. Jamain Williams' learning

1 disability went untreated.

2 10. After the sixth grade, Jamain  
3 Williams had consistently poor attendance at  
4 school and consistently received poor grades.

5 11. Jamain Williams' untreated  
6 learning disability contributed to academic  
7 failure and his eventual dropping out of school.

8 12. Jamain Williams did not receive  
9 adequate support and structure from his parents  
10 to assist him in overcoming his learning  
11 disability.

12 13. Jamain Williams did not receive  
13 adequate support and structure from the school  
14 district to assist him in overcoming his  
15 learning disability.

16 14. Jamain Williams is a good parent.

17 15. Jamain Williams has a good  
18 relationship with his children.

19 16. Jamain Williams' life has value to  
20 his extended family.

21 17. Jamain Williams' family, including  
22 his children, who are innocent of any  
23 wrongdoing, would be harmed if he were killed.

24 18. Jamain Williams is capable of  
25 establishing and sustaining meaningful and



1 positive personal relationships.

2 19. Jamain Williams has demonstrated  
3 the ability to make a positive adjustment to  
4 incarceration.

5 20. Jamain Williams has demonstrated  
6 the ability to make positive contributions to  
7 others while he has been incarcerated.

8 21. If Jamain Williams is sentenced to  
9 life imprisonment, without the possibility of  
10 release, he will never be free again.

11 Members of the jury, you are permitted  
12 to consider anything else about the commission  
13 of the crime or about the defendant's background  
14 or character that would mitigate against  
15 imposition of the death penalty.

16 If there are any such mitigating  
17 factors, whether or not specifically argued by  
18 defense counsel, which are established by a  
19 preponderance of the evidence, you are free to  
20 consider them in your deliberations.

21 In Part V of the Special Verdict Form,  
22 you are asked to identify any mitigating factors  
23 that any one of you find have been proven by a  
24 preponderance of the evidence.

25 Ladies and gentlemen, in looking at

1 Section V, after the listed mitigating factors  
2 there, on the next page, it says, list  
3 additional mitigating factors and the  
4 defendant's background or character, the  
5 circumstances of the crime, or other relevant  
6 facts or circumstances identified by the  
7 defendant as mitigation.

8 If you have any, you're to include  
9 those in there.

10 The next page says, the following extra  
11 spaces are provided to write in additional  
12 mitigating factors, if any found by any one or  
13 more jurors, and it gives you directions as to  
14 follow therein.

15 Let's move on now to the Mitigating  
16 Factors Enumerated: Andre Cooper.

17 The mitigating factors that the  
18 defendant, Andre Cooper, asserts he has proven  
19 by a preponderance are as follows:

20 1. Andre Cooper has two children,  
21 Tahaj Cooper and Andre Cooper, Jr., who are both  
22 six years of age.

23 2. If spared execution, Andre Cooper  
24 will have an opportunity to continue to be a  
25 father to his two young children.

1           3. Andre Cooper, Jr. was severely  
2 injured in the automobile accident that killed  
3 his mother, Nakira Grabel.

4           4. Executing Andre Cooper will make  
5 Andre Cooper, Jr. an orphan.

6           5. Andre Cooper grew up in a community  
7 that suffers from the conditions of poverty.

8           6. As a young boy, Andre Cooper was  
9 raised in a community that had and continues to  
10 have the highest per capita murder rate in the  
11 country and the highest levels of violent crimes  
12 in Pennsylvania.

13           7. Exposure to violence and drug abuse  
14 at a young age can negatively harm a child's  
15 development.

16           8. At a young age, Andre Cooper was  
17 exposed to exceptional levels of violence and  
18 drug crimes.

19           9. Andre Cooper grew up in Chester,  
20 one of the worst communities in the Commonwealth  
21 of Pennsylvania in which to raise children.

22           10. Andre Cooper was born to teenage  
23 parents who did not provide a stable and safe  
24 home environment.

25           11. At an early age, Andre Cooper was

1 exposed to drugs and drug use in his own home in  
2 Chester.

3 12. When he was 11, Andre Cooper went  
4 to live with his father's family in Delaware  
5 where he was united and lived together, as a  
6 family, with his younger brother Kevin and his  
7 sister Kierstin and Brittany, until there was a  
8 marital separation.

9 13. During the marital separation,  
10 Andre Cooper lived with his father, in the home  
11 of his paternal grandmother, where there was  
12 little or no supervision.

13 14. When there was a marital  
14 reconciliation, Andre Cooper was not included,  
15 remained separated from his brother and sisters,  
16 and left in a situation where there was little  
17 or no supervision.

18 15. Andre Cooper was influenced to  
19 participate in drug dealing by Anthony "Stone"  
20 Thomas, his uncle.

21 16. Although legally an adult, Andre  
22 Cooper was quite young at the time he committed  
23 the criminal conduct charged in this case.

24 17. Andre Cooper has no significant  
25 history of criminal conduct, other than charged

1 in this case.

2 18. Andre Cooper has a close, loving  
3 relationship with his younger brother and  
4 sisters, and has encouraged them towards a life  
5 away from drugs, violence and away from the  
6 streets.

7 19. Executing Andre Cooper will cause  
8 great grief and loss to those who love him.

9 20. Andre Cooper will continue to make  
10 a positive adjustment to incarceration.

11 21. While serving a life sentence,  
12 Andre Cooper can have a positive impact on the  
13 lives of other prisoners, his family and the  
14 community.

15 22. Andre Cooper is a person who is  
16 and will continue to be capable of redemption.

17 23. Others who were of equal or  
18 greater culpability in the murders will not be  
19 sentenced to death.

20 24. Brian Rogers, the man who shot and  
21 killed Tracy Saunders, does not face the death  
22 penalty.

23 25. Vincent Williams, the man who shot  
24 and killed Antonio Rykard, does not face the  
25 death penalty.

1           26. Mark Rogers is not facing the  
2 death penalty in connection with any of the  
3 murders.

4           27. Andre Cooper should not be  
5 executed, based upon the fact Brian Rogers, who  
6 was involved in the murder of Tracy Saunders,  
7 may have the opportunity to be released from  
8 prison in 25 years.

9           28. Andre Cooper should not be  
10 executed, based upon the fact that Brian Rogers,  
11 who was involved in the murder of Antonio  
12 Rykard, may have the opportunity to be released  
13 from prison in 25 years.

14           Ladies and gentlemen, you are permitted  
15 to consider anything else about the commission  
16 of the crime or about the defendant's background  
17 or character that would mitigate against the  
18 imposition of the death penalty.

19           If there are any such mitigating  
20 factors, whether or not specifically argued by  
21 the defense counsel, which are established by a  
22 preponderance of the evidence, you are free to  
23 consider them in your deliberation.

24           Likewise, there are additional spaces  
25 on the verdict slip for you to add any

1 additional factors that you may find pursuant to  
2 your deliberations.

3 All right, moving on to Section VI.  
4 This deals with Weighing the Aggravating and the  
5 Mitigating Factors.

6 Members of the jury, if you find,  
7 unanimously and beyond a reasonable doubt, that  
8 the defendant was 18 years of age or older when  
9 he committed the offenses, that he acted with  
10 the requisite intent, and that the government  
11 proved the existence of at least one statutory  
12 aggravating factor, and after you then determine  
13 whether the government proved the existence of  
14 the non-statutory aggravating factor submitted  
15 to you, and whether the defendant proved the  
16 existence of any mitigating factors, then you  
17 will engage in a weighing process.

18 In determining the appropriate  
19 sentence, members of the jury, all of you must  
20 weigh the aggravating fact or factors that you  
21 unanimously found to exist, whether statutory or  
22 non-statutory, and each of you must weigh any  
23 mitigating fact or factors that you individually  
24 found to exist. In engaging in the weighing  
25 process, you must avoid any influence of

1 passion, prejudice or undue sympathy.

2 Your deliberations should be based upon  
3 the evidence that you have seen and heard and  
4 the law on which I have instructed you.

5 Again, whether or not the circumstances  
6 in this case justify a sentence of death is a  
7 decision that the law leaves entirely to you,  
8 ladies and gentlemen.

9 The process of weighing aggravating and  
10 mitigating factors against each other or  
11 weighing aggravating factors alone, if there are  
12 no mitigating factors, in order to determine a  
13 proper punishment is not a mechanical process.

14 In other words, you should not simply  
15 count the number of aggravating and/or  
16 mitigating factors and reach a decision based on  
17 which number is greater; you should consider the  
18 weight and the value of each factor.

19 Ladies and gentlemen, the law  
20 contemplates that different factors may be given  
21 different weights or values by different jurors.  
22 Thus, you may find that one mitigating factor  
23 outweighs all aggravating factors combined, or  
24 that the aggravating factors proved do not,  
25 standing alone, justify imposition of a sentence



1 of death.

2 If one or more of you so find, you must  
3 return a sentence of life in prison without the  
4 possibility of release. Similarly, you may  
5 unanimously find that a particular aggravating  
6 factor sufficiently outweighs all mitigating  
7 factors combined to justify a sentence of death.

8 You are to decide what weight or value  
9 is to be given to a particular aggravating or  
10 mitigating factor in your decision-making  
11 process.

12 If you unanimously conclude that the  
13 aggravating factor or factors found to exist  
14 sufficiently outweigh any mitigating factor or  
15 factors, which any of you found to exist, to  
16 justify a sentence of death, or in the absence  
17 of any mitigating factor, that the aggravating  
18 factor or factors alone are sufficient to  
19 justify a sentence of death, and that,  
20 therefore, death is the appropriate sentence in  
21 this case, you must record your determination  
22 that a sentence of death shall be imposed in  
23 Section VI on the Special Verdict Form.

24 Likewise, if you determine that death  
25 is not justified, you must complete Section VI

1 of the Special Verdict Form, and record your  
2 determination that the defendant be sentenced to  
3 life imprisonment without the possibility of  
4 release.

5 Members of the jury, regardless of your  
6 findings with respect to "Aggravating Factors"  
7 and "Mitigating Factors," you are never required  
8 to impose a sentence of death. Thus, even if  
9 you find that a sentence of death would be  
10 justified after this weighing process, you are  
11 never required to return a verdict imposing a  
12 sentence of death.

13 Again, whether or not the circumstances  
14 of a particular count justify a sentence of  
15 death or a sentence of life imprisonment,  
16 without the possibility of parole, is a decision  
17 that the law leaves entirely to you.

18 Ladies and gentlemen, in deciding  
19 whether aggravating or mitigating factors have  
20 been proved, you may consider any evidence that  
21 was presented during either the guilt or penalty  
22 phase of the trial. You may also weigh  
23 inferences and reach conclusions that reason and  
24 common sense leads you to draw from the facts  
25 that have been established from testimony and

1 other evidence in the case.

2 As you have, throughout this trial, you  
3 may consider both the direct and circumstantial  
4 evidence, as I defined that to you earlier on in  
5 the earlier phase of this trial.

6 While you must consider all the  
7 evidence, you are not required to accept any of  
8 the evidence as -- strike that.

9 While you must consider all of the  
10 evidence, you are not required to accept any of  
11 the evidence that you find not to be true or  
12 accurate. You alone determine issues of  
13 credibility and decide how much weight, if any,  
14 to give testimony and other evidence.

15 As in the guilt phase, the questions  
16 and arguments, again, of the attorneys are not  
17 evidence. If there is any difference between  
18 the attorneys' recollection of the evidence, or  
19 my recollection of the evidence to the extent  
20 that I comment on it, and I have not -- and I  
21 will not -- and your recollection, you are to be  
22 guided by your recollection of what the evidence  
23 was.

24 I want to particularly underline  
25 another important point to you at this time,

1 ladies and gentlemen. In determining whether to  
2 impose a death sentence or life imprisonment  
3 without the possibility of release, you must  
4 avoid any influence of passion, prejudice, or  
5 sympathy, as I mentioned earlier.

6 It is extremely important for you to  
7 remember this, as some of the testimony in the  
8 final phase of this case, and even some of  
9 counsel's arguments, have been somewhat  
10 emotional. It is perfectly natural to be  
11 touched by emotional testimony or arguments. We  
12 are human beings, not machines.

13 But remember, that your ultimate  
14 decision must be made in a calm, objective and  
15 dispassionate way. No jury can ever return a  
16 verdict based on sympathy, anger, or bias. Your  
17 deliberations must be based upon the evidence  
18 seen and heard and the law on which I have  
19 instructed you.

20 Members of the jury, always remember  
21 there are two separate death penalty phases that  
22 have been presented, one for each of the  
23 defendants. Each is entitled to separate  
24 considerations by you, the jury.

25 The government has the burden of proof

1 as to each individual defendant. Each defendant  
2 has the burden of proof as to any mitigating  
3 factor pertaining to him.

4 Any consideration of aggravating and  
5 mitigating factors are unique to each individual  
6 defendant. It would be improper, members of the  
7 jury, for any juror to compare or consider one  
8 defendant's listed mitigating factors against  
9 another defendant's.

10 Again, you must give separate and  
11 individual consideration to each defendant.

12 Members of the jury, I instruct you  
13 that the government has withdrawn its notice of  
14 intent to seek the death penalty against Vincent  
15 Williams. After evaluating reports by various  
16 experts, retained by both Vincent Williams and  
17 the government, it was determined and agreed to  
18 by them that Vincent Williams is legally  
19 "mentally retarded."

20 This determination is binding on all  
21 parties, the government and the defendants.

22 Ladies and gentlemen, at the end of  
23 your deliberations, if you unanimously determine  
24 that the defendant should be sentenced to death,  
25 or if you determine that life imprisonment

1 without the possibility of release is the  
2 appropriate sentence, the Court is required to  
3 impose that sentence.

4 Lastly, ladies and gentlemen, as you  
5 can see, as to each of these Special Verdict  
6 Forms, there's Section No. VII, and that deals  
7 with Certification. I now instruct you on that  
8 section.

9 In your consideration of whether the  
10 death penalty is justified, members of the jury,  
11 you must not consider the race, color, religious  
12 beliefs, national origin, or sex of either the  
13 defendant or the victims. You are not to return  
14 a sentence of death unless you would return a  
15 sentence of death for the crime in question  
16 without regard to the race, color, religious  
17 belief, national origin or sex of either the  
18 defendant or any victim.

19 To emphasize the importance of this  
20 consideration, Section V of the Special Verdict  
21 Form contains a Certification Statement. Each  
22 juror should carefully read the statement, and  
23 sign with your juror number in the appropriate  
24 place, if the statement accurately reflects the  
25 manner in which each of you reach your decision.

1           Ladies and gentlemen, I further  
2     instruct you that Jamain Williams and Andre  
3     Cooper did not testify during the penalty phase.  
4     A defendant has the Constitutional right to  
5     remain silent. Also, there is no burden upon a  
6     defendant to prove that he should not be  
7     sentenced to death. The burden is entirely on  
8     the prosecution to prove that a sentence of  
9     death is justified.

10           Accordingly, the fact that Jamain  
11     Williams and Andre Cooper did not testify must  
12     not be considered by you in any way, or even  
13     discussed, in arriving at your decision on  
14     whether to impose a death penalty or a sentence  
15     of life imprisonment without the possibility of  
16     parole for any count in this case.

17           Even though the defendant has the  
18     burden of establishing mitigating factors by a  
19     preponderance of the evidence, our law does not  
20     impose a burden upon the defendant to testify in  
21     connection with the presentation of mitigation,  
22     mitigation evidence.

23           Ladies and gentlemen, I'm going to take  
24     a brief break now. Let me see counsel at  
25     sidebar.

1 (Sidebar conference was held.)

2 THE COURT: Other than my concluding  
3 remarks in reference to their going out and  
4 deliberating, is there anything additional?

5 MR. WILFORD: Yes, Your Honor. One  
6 point. The Court did not indicate that an  
7 individual juror has a right to vote for life,  
8 but it would require all the jurors,  
9 unanimously, to vote for death. I think it's  
10 important --

11 THE COURT: I'll mention it again.  
12 Affirmed, all right?

13 MR. SWEENEY: With respect to the juror  
14 never being required to impose, that  
15 instruction, together with the sympathy  
16 instruction, I think it needs to be clarified so  
17 that mercy and hope can be considered by the  
18 jury.

19 THE COURT: That's your objection. I  
20 believe that there's an adequate record for them  
21 to consider it, each separately and distinct, as  
22 opposed to combining them. Go ahead.

23 MR. RICCO: I needed him to read that.  
24 Your Honor, when we submitted that proposed  
25 verdict form, this statement was a part of it,



1 and this statement, as a mitigator, the fact  
2 that either of these men, if they are not  
3 sentenced to death, would spend the rest of  
4 their life in prison without the possibility of  
5 release, is a mitigator.

6 That was part of our instructions we  
7 submitted.

8 THE COURT: Yes, I thought that was  
9 included within the instruction that I gave,  
10 that they would be imprisoned for the rest of  
11 their life, but I'll go over it again, if you  
12 want it.

13 MR. RICCO: Please.

14 MR. SWEENEY: For the record, I believe  
15 we have a similar instruction included --

16 THE COURT: I know yours is included.

17 MR. RICCO: Ours was not. I'm sorry,  
18 Judge.

19 THE COURT: I'll add it on. Anything  
20 else?

21 MS. WINTER: No, sir.

22 MR. RICCO: No, sir.

23 MR. SWEENEY: No, sir.

24 (Sidebar conference concluded.)

25 THE COURT: Ladies and gentlemen, as

1 you are aware, that is the opportunity that I  
2 consult with counsel to see if there is any  
3 additional point or points that they wish that I  
4 clarify. There were two points that I want to  
5 raise to you at this point in time.

6 There is an additional mitigating  
7 factor, and I'll submit this to you in a written  
8 form. I'll have my secretary prepare this.

9 That mitigating factor, it's already  
10 included in Jamain Williams' list of mitigating  
11 factors. It pertains to both of them, in any  
12 case. This one also pertains to Andre Cooper.

13 The mitigating factor is that the law  
14 mandates that if either Jamain Williams or Andre  
15 Cooper is not sentenced to death, either man  
16 will spend the rest of his life in a United  
17 States Prison without the possibility of  
18 release. That's a mitigating factor for you to  
19 consider.

20 As I stated, you'll have the written  
21 form also to include in the Court's  
22 instructions.

23 The other point was that in order for  
24 you to return a verdict of death, the 12 of you  
25 who will be deliberating must unanimously find

1     that decision. It only takes one of you to  
2     return a sentence of life without the  
3     possibility of parole.

4             So saying, ladies and gentlemen, it is  
5     your duty to consult with one another and to  
6     deliberate with one another with a view towards  
7     reaching an agreement, if you can do so without  
8     violence to your individual judgment.

9             Each of you must decide the case for  
10    himself and herself, but do so only after an  
11    impartial consideration of the evidence with  
12    your fellow jurors. In the course of your  
13    deliberations, do not hesitate to reexamine your  
14    own views and to change your opinion, if you are  
15    convinced that it is erroneous.

16            If you want to communicate with me at  
17    any time during your deliberations, please write  
18    down your message or question, pass the note to  
19    the Marshal, who will bring it to my attention  
20    and, as previously, we will gather everybody  
21    together and we'll respond to any questions that  
22    you may have. We'll try to do that as quickly  
23    as possible.

24            I caution you, members of the jury,  
25    however, with any message or question that you

1 might send, that you should not tell me any  
2 details of your deliberation or how many of you  
3 are voting in a particular way on any issue.

4 Let me remind you, again, that nothing  
5 that I have said in these instructions, and  
6 nothing that I have said or done during the  
7 trial, has been said or done to suggest to you  
8 what I think your decision should be.

9 The decision is yours exclusively. The  
10 decision is your exclusive responsibility,  
11 ladies and gentlemen of the jury.

12 So saying, that concludes the Court's  
13 instructions to you.

14 Juror No. 4, on the end, I'm going to  
15 ask you to step out of the box. This is  
16 becoming old hat with the four of you. I'm  
17 going to ask you to step out of the box. The 12  
18 others are directed to go into the jury room and  
19 commence your deliberations.

20 Your lunch should be there, and we're  
21 going to provide lunch for the other four.

22 You're directed to go in and begin your  
23 deliberations, ladies and gentlemen.

24 (The jurors exited the courtroom at  
25 12:35 p.m.)

1           THE COURT: Ladies and gentlemen, you  
2 can have a seat back there in the jury box for a  
3 second. Everybody else may be seated.

4           Ladies and gentlemen, we're going to --  
5 gentleman, only one this time. You're by  
6 yourself. All right?

7           We're going to put you, I think, in  
8 another jury room, and we're going to bring your  
9 lunch to you. We're going to keep you around  
10 today. By the end of the day, you can let me  
11 know what your desire is, if you want to  
12 continue to come in, as previously, we'll bring  
13 you in.

14           We'll see how it goes. Or you can stay  
15 at home or do whatever you want and be reachable  
16 by telephone and we'll bring you in if we need  
17 to, but I need to know that before the end of  
18 the day. All right?

19           Let me get Ms. Mickie in here and put  
20 her to work. She said that she'll be right out  
21 and take you. I guess you can go back there  
22 because there's a hallway right there without  
23 going into the jury room.

24           (The alternate jurors were excused from  
25 the courtroom.)

1           THE COURT: Now, counsel, you can place  
2 any exception to the Court's instructions on the  
3 record that you want.

4           MR. SWEENEY: Nothing, Your Honor.

5           THE COURT: You made the objection on  
6 the sidebar, so with that, that will go with the  
7 life of this case wherever it goes from this  
8 point.

9           Any others?

10          MR. RICCO: No, Your Honor.

11          THE COURT: Government?

12          MS. TAYLOR: No, Your Honor.

13          THE COURT: All right. Let Ms. Mickie  
14 know where you're going to be. I tell you this.  
15 Obviously, even if they had questions -- and  
16 we're going to send out the Court's  
17 instructions. I have that here, and I'll give  
18 you a copy.

19          MR. SWEENEY: May I just step out for a  
20 moment to get our exhibit books?

21          THE COURT: Sure. That's right, we  
22 have to rule on those.

23          (Pause.)

24          THE COURT: Any objections to the  
25 exhibits that have been presented here for

1 consideration by the jury?

2 MS. TAYLOR: I would ask, Your Honor,  
3 that nothing go out until they make a request  
4 for it, which I think is what we did last time.

5 THE COURT: Yes, I can appreciate that.  
6 Any objection?

7 They will probably want to see some of  
8 it, I would imagine. When they ask, we'll just  
9 give it on out, or if you want to send it out  
10 now, you can. All right? Your call.

11 MR. WILFORD: On behalf of Mr. Cooper,  
12 we suggest that the exhibits be sent out.

13 THE COURT: Why don't we just send them  
14 out? They'll have them there; they are  
15 available for their perusal, and they can look  
16 at them and make that call themselves.

17 They are admitted into evidence, and  
18 there is no objection to them. We'll do that.

19 Both of the defense exhibits -- any  
20 government exhibits?

21 MS. TAYLOR: We'll have to pull it  
22 together, Your Honor.

23 THE COURT: Pull it together, and they  
24 can, after they've been reviewed --

25 MR. WILFORD: Your Honor, we can wait

1     until the government has their exhibits so it's  
2     one set.

3             THE COURT: All right, that's fine.

4             MS. TAYLOR: Yes, sir.

5             THE COURT: If there's any objections,  
6     I'll come back out and deal with those. I tell  
7     you now I will be away. I have an appointment  
8     at 1:30 to 2:30, so there will be no questions  
9     taken or no verdict taken or anything like that.  
10    You can do whatever you want during that hour.  
11    If you have anything for me to rule on, get it  
12    to me before 1:30 and I'll rule on it.

13            Anything else?

14            MS. TAYLOR: No, sir.

15            MR. RICCO: No, sir.

16            MR. HILL: No, sir.

17            THE COURT: All right. We're in  
18    recess then.

19            (Recess was held at 12:40 p.m.)

20            (The Court resumed the proceedings at  
21    2:45 p.m.)

22            THE COURT: Counsel, we have received a  
23    request, Question No. 1. It reads as follows:

24            "May we have the verdict slips from  
25    each juror from the previous phase? There are



1 notes on some of them."

2 Each of the jurors, on their verdict  
3 slip that they individually had, made notes in  
4 the previous phase. Those verdict slips are in  
5 our possession, and they are asking for them  
6 back.

7 Any objections?

8 MS. TAYLOR: No, Your Honor, not from  
9 the government.

10 MR. RICCO: No -- one moment.

11 THE COURT: Sure.

12 MR. RICCO: Your Honor, could we have a  
13 sidebar for a second?

14 THE COURT: A sidebar?

15 MR. RICCO: Yes, I would like to ask  
16 the Court a question.

17 THE COURT: Sure.

18 (Sidebar conference was held off the  
19 record.)

20 MR. RICCO: For the sake of prosperity,  
21 it may be what we stated at the sidebar, which  
22 was essentially how was the Court going to deal  
23 with the fact that we had a new juror in?

24 The Court has indicated what the Court  
25 will instruct the jury, and that's fine with the

1 defendant, Andre Cooper.

2 THE COURT: Very well. We'll bring  
3 them in and address that issue shortly.

4 The second issue deals with a request  
5 for Mrs. Saunders' transcript from phase one.

6 Now, I tell counsel that that was not  
7 previously requested, so you will have to review  
8 the transcript of Ms. Saunders and delete those  
9 portions that can't go back to the jury, sidebar  
10 conferences, objections that were ruled against,  
11 and they are entitled to have that testimony for  
12 their deliberation process. All right?

13 MR. RICCO: Yes, Your Honor.

14 THE COURT: Why don't we bring them in,  
15 and I'll address both of these issues with them  
16 and we'll go from there.

17 Mr. Sweeney?

18 MR. SWEENEY: I stood up because other  
19 people stood up.

20 THE COURT: All right.

21 (The jury entered the courtroom at  
22 2:48 p.m.)

23 THE COURT: Good afternoon, ladies and  
24 gentlemen. Ladies and gentlemen, your question  
25 number one, and it reads as follows:

1 "Number one, may we have the verdict  
2 slips from each juror from the previous phase?  
3 There are notes on some of them."

4 Ladies and gentlemen, in this regard, I  
5 am going to give the 11 of you, who deliberated  
6 in the first phase, the opportunity to view your  
7 notes.

8 Juror No. 4 wasn't in that first phase,  
9 so this is a brand-new phase. This is a  
10 brand-new deliberation process. What was  
11 deliberated previously, it's not now. You have  
12 to start anew with Juror No. 4 in your  
13 discussion.

14 These notes, as indicated on this  
15 request, are personal to each of the 11 of you  
16 that participated in your deliberation process.  
17 Any deliberation that takes place now is afresh,  
18 anew and from the beginning.

19 Is that understood?

20 THE JURORS: Yes.

21 THE COURT: And, secondly, in your  
22 request -- is there anything additional in that  
23 regard that counsel wants?

24 MR. WILFORD: No, sir.

25 MR. HILL: No, Your Honor.

1 MS. TAYLOR: No, Your Honor.

2 THE COURT: In reference to your  
3 Request No. 2, Mrs. Saunders' transcript from  
4 phase one, you'll be given Mrs. Saunders'  
5 transcript, but, as in the previous transcripts  
6 that we gave to you, counsel and I have to  
7 review the transcripts and take out those  
8 portions of the transcripts that are sidebar  
9 conferences, objections that were sustained. As  
10 soon as that's done, we will give you the  
11 transcript. All right?

12 If you have any further requests,  
13 please put it down and we'll address it.

14 You're excused. You can go back into  
15 the jury room and continue with your  
16 deliberations.

17 (The jury exited the courtroom at  
18 2:50 p.m.)

19 THE COURT: Now, counsel, I take it  
20 we'll have to pull Ms. Saunders' testimony for  
21 you.

22 MR. SWEENEY: We may be able to handle  
23 it as we were handling it before, but I need to  
24 get together with Gregg and the computer  
25 consultants. That may be the easiest way

1 because I know there were sidebars, I think.

2 THE COURT: There may have been. I  
3 don't know whether there were sidebars with her  
4 testimony or not. But if there were, then  
5 you'll have to address that issue, and you can  
6 review it in any format that you need to. But  
7 we have to get it done as soon as possible.

8 MR. RICCO: Judge, we have the  
9 transcript here.

10 THE COURT: Excellent. We'll be in  
11 recess until you either need me to come out and  
12 rule on some portion of this transcript, or if  
13 you're in agreement, the transcript can be given  
14 to Ms. Mickie so that she can give it to the  
15 jury. All right?

16 MS. TAYLOR: Yes, sir.

17 THE COURT: We'll be in recess until  
18 further notice.

19 (Recess was held at 2:55 p.m.)

20 (The Court resumed the proceedings at  
21 4:25 p.m.)

22 THE COURT: There was another question,  
23 but they said that we can give it to them  
24 tomorrow. We are going to send them home for  
25 the evening.

1           May we have the binder, including the  
2   plea agreements, or at least the plea  
3   agreements? Essentially, I think it's the plea  
4   agreements that they want.

5           So I take it there's no objections to  
6   the plea agreements going out?

7           MR. RICCO: No, Your Honor.

8           MS. TAYLOR: No, sir.

9           MR. HILL: No, Your Honor.

10          THE COURT: Very well, bring them in,  
11   Ms. Mickie, and let's send them home.

12          (The jury entered the courtroom at  
13   4:25 p.m.)

14          THE COURT: Good afternoon, ladies and  
15   gentlemen.

16          Ladies and gentlemen, you have Question  
17   No. 2, and it reads as follows:

18          "May we have the binder, including the  
19   plea agreements, or at least the plea  
20   agreements?"

21          We're going to provide you with the  
22   plea agreements. If you want the remainder of  
23   the binder, we will provide that to you, but at  
24   this juncture, we will provide you with the plea  
25   agreements. We'll have those for you tomorrow.

1           Obviously, it's 4:30 now, and we're  
2 going to send you home. It's clearly important  
3 that you do not talk about the case among  
4 yourselves or with others. We will see you back  
5 tomorrow morning at 9:30.

6           As a matter of fact, I have to talk to  
7 the alternate jurors before you leave. So I'm  
8 going to send you back into the jury room, and  
9 then we're going to send you home shortly. All  
10 right? Thank you.

11           (The jury panel exited the courtroom at  
12 4:27 p.m.)

13           THE COURT: Ladies and gentleman, have  
14 you decided what your pleasure is as far as  
15 coming in tomorrow or --

16           THE JURORS: We'll come in.

17           THE COURT: Excellent. Well, we'll see  
18 you tomorrow also at 9:30. We're going to send  
19 you all home now. It's important that you do  
20 not talk with the other jurors. They are  
21 working now, all right?

22           If one of you were to go into the  
23 process, you would have to start all over again  
24 with that juror. So don't talk to them at all  
25 about what's going on in the jury room.

1 Bring out the other jurors.

2 Everybody have a safe trip and a nice  
3 evening. Thank you.

4 Very well, counsel, that concludes our  
5 business for today. We'll be in recess until  
6 tomorrow morning.

7 MR. WILFORD: The government has the  
8 plea agreements so we can give them to Ms.  
9 Mickie.

10 THE COURT: You can. Very well.

11 Anything else before we leave?

12 MR. RICCO: No, sir.

13 MS. TAYLOR: No, sir.

14 THE COURT: Have a nice evening.

15 (Court adjourned the proceedings at  
16 4:30 p.m.)



I N D E X

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I certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

DATE \_\_\_\_\_

Gregg B. Wolfe, R.P.R., C.M.